TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 14, 1937.

CERTIORARI GRANTED JUNE 1, 1937.

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29—Letter written and signed by defendant (omitted pursuant to stipulation), marked in evidence at folio 576.

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D—Letter signed by Rosa Sciortine on June 20, 1934 (omitted pursuant to stipulation), marked in evidence at folio 276.

E—Paper signed by Liberata Benemerito (omitted pursuant to stipulation), marked in evidence at folio 530.

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I—Certified copy of Statement of City Tax Department (omitted pursuant to stipulation), marked in evidence at folio 863.

K—Letter signed by Mrs. Terrone's daughter (omitted pursuant to stipulation), marked in evidence at folio 926.

L—Doctor's certificate as to physical condition of Mr. Aronowitz (omitted pursuant to stipulation), marked in evidence at folio 955.

M—Receipt for $25 signed by defendant (omitted pursuant to stipulation), marked in evidence at folio 962.

N—Form letters sent to Home Owner (omitted pursuant to stipulation), marked in evidence at folio 1026.

UNITED STATES CIRCUIT COURT OF APPEALS, 1

FOR THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

2

Statement Under Rule 13.

The indictment herein was filed February 5th, 1935 against the defendant, consisting of 25 counts: twenty counts, for violations of Section 1467 (E) of the Home Owners Loan Act of 1933, as amended, covering the soliciting, contracting and receiving of fees from applicants for home loans; two counts, for violation of Section 1467 (a) of the same Act, prohibiting the making of false statements to influence action of Home Owners Loan Corporation; two counts for scheme to defraud in violation of Sec. 338, Title 18, U. S. 3
Code; and one count for pretending to be an employee of the United States in violation of Sec. 76, Title 18, U. S. Code. She was arraigned before Inch, U. S. District Judge, on March 19th, 1935, and pleaded not guilty. Her bail was fixed at $2,500. The trial was commenced before Hon. Matthew T. Abruzzo, U. S. District Judge and a jury on May 13th, 1936 and was concluded on

Statement Under Rule 13.

May 19th, 1936. The government withdrew three counts, the one charging pretending to be an employee and the two counts which charged scheme to defraud. Of the remaining 22 counts, the jury found the defendant not guilty on 14 counts and guilty on eight, namely, Nos. 5, 8, 12, 14, 15, 20, 24 and 25, and the defendant was remanded on May 20th, 1936 to await sentence. Motion to set aside the verdict was denied. On May 29th, 1936, the defendant was sentenced on 5th count, one year and one day; 8th count, 2 years probation, sentence suspended; on the other six counts, one year and one day to run concurrently. Notice of Appeal was filed May 29th, 1936. Defendant was remanded by the trial Court, and on June 2nd, 1936, bail was fixed by Circuit Judge Manton at $2,500. pending appeal.

The United States of America is represented by

Criminal Docket.

Docket 36222 — Vio: 1467(e)
Title of case — Title 12 U. S. Code

THE UNITED STATES

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,

Date: June 12th, 1936

Date	Proceedings	Clerk's Fees Plf.	Clerk's Fees Deft.
Feb. 5, 1935	Indictment filed.	$5.00	
Feb. 19, 1935	Order for Bench Warrant filed and entered.		
Feb. 19, 1935	Bench warrant issued.		
Feb. 21, 1935	Before Inch, *J.*—Defendant arraigned. Plea not guilty—bail fixed at $2000—ordered to return March 18, 1935.		
Feb. 25, 1935	Bench warrant returned and filed—Marshal's return filed.		
Mar. 18, 1935	Campbell, *J.*—Defendant not present—default noted—adjourned to March 19, 1935 for forfeiture.		
Mar. 19, 1935	Campbell, *J.*—Defendant present—default opened—defendant ordered to return April 3, 1935.		
Apr. 3, 1935	Inch, *J.*—Defendant present—ordered to return April 18, 1935.		
Apr. 18, 1935	Inch, *J.*—Defendant present—ordered to return April 26, 1935.		
Apr. 25, 1935	Inch, *J.*—Defendant present—ordered to return April 30, 1935.		

Criminal Docket.

Date	Proceedings	Clerk's Fees Plf.	Deft.
Apr. 30, 1935	Inch, *J.*—Defendant present—ordered to return May 15, 1935.		
May 15, 1935	Moscowitz, *J.*—Defendant present—ordered to return May 27, 1935.		
May 27, 1935	Moscowitz, *J.*—Defendant present—ordered to return June 10, 1935.		
June 10, 1935	Campbell, *J.*—Defendant present—ordered to return June 17, 1935.		
June 17, 1935	Campbell, *J.*—Defendant present—ordered to return August 5, 1935.		
Aug. 5, 1935	Moscowitz, *J.*—Defendant present—ordered to return September 10, 1935.		
Sept. 10, 1935	Byers, *J.*—Defendant present—ordered to return October 15, 1935.		
Oct. 15, 1935	Campbell, *J.*—Defendant present—ordered to return November 12, 1935.		
Nov. 12, 1935	Byers, *J.*—Defendant not present—default noted, reported sick—adjourned to December 16, 1935 for forfeiture.		
Dec. 16, 1935	Byers, *J.*—Defendant not present—adjourned to January 2, 1936 for forfeiture.		
Jan. 2, 1936	Inch, *J.*—Defendant present—withdraws plea, not guilty and plea guilty to counts 7 and 12 and continued on bail to January 10, 1936.		
Jan. 10, 1936	Inch, *J.*—Defendant present—continued on bail to January 15th, 1936 for sentence.		
Jan. 15, 1936	Inch, *J.*—Defendant present and withdraws plea guilty and plea not guilty to counts 7 and 12 on motion of attorney for defendant and ordered to return February 5, 1936.		

Criminal Docket.

Date	Proceedings	Clerk's Fees Plf.	Deft.	13
Feb. 5, 1936	Campbell, *J.*—Defendant present—ordered to return March 4, 1936.			
Mar. 4, 1936	Moscowitz, *J.*—Defendant present—ordered to return April 1, 1936.			
Apr. 1, 1936	Inch, *J.*—Defendant present—ordered to return May 6, 1936.			
May 6, 1936	Abruzzo, *J.*—Defendant present—ordered to return May 11, 1936.			
May 11, 1936	Abruzzo, *J.*—Defendant not present—case adjourned to May 13, 1936.			
May 13, 1936	Abruzzo, *J.*—Case called—defendant present. Trial ordered. Trial adjourned to May 14, 1936.			14
May 14, 1936	Abruzzo, *J.*—Case called—defendant present. Trial resumed, and adjourned to May 15, 1936.			
May 15, 1936	Abruzzo, *J.*—Case called—defendant present. Trial resumed. Counts 6, 10 and 16 dismissed on motion of Assistant U. S. Attorney Scileppi. Trial adjourned to May 18, 1936.			
May 18, 1936	Abruzzo, *J.*—Case called—defendant present. Trial resumed. Trial adjourned to May 19, 1936.			
May 19, 1936	Abruzzo, *J.*—Order for sustenance filed and entered.			15
May 19, 1936	Abruzzo, *J.*—Case called—defendant present. Trial resumed. Jury returns at 12:35 A. M. on May 20th, 1936 and render a verdict of not guilty on each of counts 1, 2, 3, 4, 7, 9, 11, 13, 17, 18, 19, 21, 22 and 23 and guilty on counts 5, 8, 12, 14, 15, 20, 24, 25. Mr.			

Date	Proceedings	Clerk's Fees Plf.	Deft.
16	Serri moves to set aside the verdict as to counts 5, 8, 12, 14, 15, 20, 24 and 25. Motion denied. Defendant remanded to May 26, 1936.		
May 26, 1936	Abruzzo, *J.*—Defendant present and remanded to May 29, 1936.		
May 29, 1936	Abruzzo, *J.*—Defendant present, sentenced to be imprisoned for one year and one day at a penitentiary or institution on each of counts 5, 12, 14, 15, 20, 24 and 25. Sentence on each count to		
17	run concurrently without costs. Sentence on count 8 suspended and defendant placed on probation for 2 years. Writ of commitment issued.		
June 1, 1936	Notice of appeal filed and assignment of errors filed.	$5.00	
June 2, 1936	Abruzzo, *J.*—Order filed and entered directing attorneys to appear on June 5, 1936 at 10 A. M., etc.		
June 3, 1936	Copy of notice of appeal and assignment of errors with Clerk's statement mailed to Circuit Court of Appeals.		
June 9, 1936	Abruzzo, *J.*—Order of probation filed and		
18	entered.		
June 30, 1936	Abruzzo, *J.*—Order filed and entered extending time to file bill of exceptions and assignment of errors.		$5.00
Aug. 18, 1936	Abruzzo, *J.*—Order filed and entered extending time to file bill of exceptions etc. to September 8, 1936.		
Sept. 8, 1936	Abruzzo, *J.*—Order filed and entered extending time to file bill of exceptions to September 28, 1936.		
Sept. 25, 1936	Moscowitz, *J.*—Order filed and entered extending time to file bill of exceptions etc. to October 13, 1936.		

Affidavit of F. R. Serri, Relative to Order of September 25, 1936, Extending Time to File Bill of Exceptions. 16a

DISTRICT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

—against—

17a

GERTRUDE KAY, alias GERTRUDE KLEIN.

City and State of New York,
County of Kings—ss.:

F. R. SERRI being duly sworn deposes and says:

The above-entitled action having been tried in the United States District Court in and for the Eastern District of New York before Honorable Matthew T. Abruzzo, District Judge, an order extending appellant's time to file her Bill of Exceptions and Assignment of Errors was submitted today for his signature. 18a

Due to his absence today, September 25th, 1936, from the Eastern District, the order was signed in his stead by Honorable Grover M. Moscowitz, one of the judges of the United States District

Affidavit of F. R. Serri, Relative to Order of September 25, 1936, Extending Time to File Bill of Exceptions.

16b

Court in and for the Eastern District of New York.

F. R. SERRI.

Sworn to before me this
25th day of September, 1936.

RAPHAEL SERRI,
Notary Public,
Kings County.
17b Kings Co. Clerk's No. 30, Reg. No. 8039.
Commission Expires Mar. 30, 1938.

18b

Indictment.

DISTRICT COURT OF THE UNITED STATES OF AMERICA

FOR THE EASTERN DISTRICT OF NEW YORK.

DG/mvo

At a Stated Term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid, on the second day of January in the year of our Lord one thousand nine hundred and thirty-five, and continued by adjournment to and including the fifth day of February, in the year of our Lord one thousand nine hundred and thirty-five.

Eastern District of New York—ss.:

THE GRAND JURORS OF THE UNITED STATES OF AMERICA, WITHIN AND FOR THE DISTRICT AFORESAID, ON THEIR OATHS PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from one Esther Dostis a charge of Forty ($40.00) Dollars; that

the said Esther Dostis, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Esther Dostis, as aforesaid, was in connection with the said loan to the said Esther Dostis from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Esther Dostis, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

SECOND COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously contract with one Esther Dostis for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said Esther Dostis, of a charge of Forty ($40.00) Dollars; that the said Esther Dostis, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge made as aforesaid, was in connection with the said loan to

the said Esther Dostis from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Esther Dostis, in connection with the said loan, that the said contract for said charge made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

THIRD COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously receive from one Esther Dostis the sum of Twenty ($20.00) Dollars; that the said Esther Dostis, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April

27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York. 31

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said sum of Twenty ($20.00) Dollars received as aforesaid by the defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Esther Dostis, was in connection with the said loan to the said Esther Dostis from the Home Owners' Loan Corporation, and was a payment on account of a charge made for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Esther Dostis, in connection with the said loan; that the said payment made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)). 32 33

FOURTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, hereto-

34 fore, to wit, on or about the 17th day of May, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from Laura Terrone and Dominick Terrone a charge of Fifty ($50.00) Dollars; that the said Laura Terrone and Dominick Terrone, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress en-
35 acted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Laura Terrone and Dominick Terrone as their home and located at premises known and described as 228 Bergen Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein,
36 from the said Laura Terrone and Dominick Terrone, as aforesaid, was in connection with the said loan to the said Laura Terrone and Dominick Terrone from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Laura Terrone and Dominick Terrone, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee

authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)). 37

FIFTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY, 38
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 4th day of September, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, for the purpose of influencing the action of the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, 39
upon an application for a loan under said Home Owners' Loan Act, on property located at 228 Bergen Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, filed with the said Home Owners' Loan Corporation by said Laura Terrone and Dominick Terrone, said loan being for the purpose, among others, of refunding an indebtedness to said defendant, GERTRUDE KAY, alias Gertrude

40 Klein, secured by a mortgage held and owned by the said defendant on said premises in the name of one Edna Greger, did then and there, in a certain instrument known as H.O.L.C. Form No. 2 Revised 6-12-34, dated September 4th, 1934, and filed with said Home Owners' Loan Corporation, unlawfully, knowingly, wilfully and feloniously make to the said Home Owners' Loan Corporation a certain false statement in writing, to wit:

"H.O.L.C. Form No. 2
Revised 6-12-34

41 MORTGAGEE'S CONSENT TO TAKE BONDS

TO HOME OWNERS' LOAN CORPORATION:

The undersigned is a holder of a 2nd mortgage or other obligation, which constitutes a lien or claim on the title to the home property of Laura Terrone, K-24928 located at 228 (Number) Bergen St., Bklyn, N. Y. in the sum of (Street) (City) (State) $590.00, including unpaid balance of principal and interest, to date.

42 Being informed that said owner has made application to Home Owners' Loan Corporation to refund his said indebtedness, the undersigned has considered the method of refunding mortgages provided in Home Owners' Loan Act of 1933, as amended and passed by Congress and approved by the President, and the undersigned hereby consents, if said refunding can be consummated, to accept in full settlement of the claim of the under-

signed the sum of $590.00, face value of the bonds of Home Owners' Loan Corporation, to be adjusted with not exceeding $25. cash and thereupon to release all the claim of the undersigned against said property. 43

It is understood that the Home Owners' Loan Corporation will incur trouble and expense in connection with its effort to refund the indebtedness of said home owner, and this consent is executed in consideration of the same and shall be binding for a period of 30 days from date, and thereafter until 10 days written notice shall have been given the State manager of the Corporation. 44

This, the 4th day of Sept., 1934.

The following information should be furnished by the mortgagee:

Date of mortgage.....date due.....balance due $.....

Interest at ...%. Due from..... to..... $.....

Other advances (describe):

$.....

$.....

$..... 45

Total amount due to mortgagee $590 as of Sept. 1, 1934 date.

/sgd/ EDNA GREGER
(Signature)
1904 Foster Ave.
(Address)
Bklyn., N. Y.

(Aug. 14, 1934) Phone Number....."

MCV

"

46 And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that in truth and in fact, as the defendant, GERTRUDE KAY, alias Gertrude Klein, well knew, there was not due to the defendant on said day and date last above mentioned, to wit: the 4th day of September, 1934, on the mortgage held by the said defendant, GERTRUDE KAY, alias Gertrude Klein, on the premises aforesaid, to wit: 228 Bergen Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the sum of Five Hundred and Ninety
47 ($590.00) Dollars, but that in truth and in fact there was due to the said defendant, GERTRUDE KAY, alias Gertrude Klein, the sum of Two Hundred and Eighty-Five ($285.00) Dollars, as the said defendant then and there well knew; that the defendant, GERTRUDE KAY, alias Gertrude Klein, then and there well knew such statement as to the amount of the lien, claim and indebtedness so stated as aforesaid, to be false; against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided (Title 12, United States Code, Section 1467 (a)).

48

SIXTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, in the Borough of Brooklyn, County of Kings, City, State

and Eastern District of New York, and within 49
the jurisdiction of this Court, before and at the time and times of the committing of the offenses in this indictment hereinafter set forth, did unlawfully, wilfully and knowingly devise a certain artifice and scheme to defraud Laura Terrone and Dominick Terrone, and the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, and to obtain from said persons and said corporation money and property 50
by means of false and fraudulent representations, pretenses and promises.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said scheme and artifice to defraud, and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations and promises, so having been devised by the said defendant, GERTRUDE KAY, alias Gertrude Klein, as aforesaid, was substantially as follows: that, as the defendant well knew, Laura Terrone and Dominick Terrone, were the owners of certain property located at 228 Bergen Street, 51
in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and had, on or about the 17th day of May, 1934, filed an application for a loan on said property under and by virtue of the Home Owners' Loan Act of 1933, with the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934,

52 entitled and known as the Home Owners' Loan Act of 1933, as amended, said loan being for the purpose, among others, of refunding an indebtedness to the said GERTRUDE KAY, alias Gertrude Klein, secured by a mortgage held by said defendant on the said premises in the name of one Edna Greger; that as the defendant, GERTRUDE KAY, alias Gertrude Klein, then and there well knew, there was due to the said defendant as a balance on the said mortgage so held and owned by the said defendant, the sum of Two Hundred and Eighty-Five ($285.00) Dollars; that the said
53 defendant, for the purpose of defrauding the said Laura Terrone and Dominick Terrone, and for the purpose of obtaining money from the said Home Owners' Loan Corporation by false representations, did for the purpose of attempting to execute said scheme, sign a certain false statement in writing, on or about the 4th day of September, 1934, in which the said defendant, GERTRUDE KAY, alias Gertrude Klein, set forth that she was, at the time of the execution of the said statement, the holder of the second mortgage or other obligation constituting a lien or claim on the title of said premises aforesaid, located as heretofore set
54 forth, to wit: at 228 Bergen Street, in the Borough of Brooklyn, City, State and Eastern District of New York, in the sum of Five Hundred and Ninety ($590.00) Dollars; that in pursuance of the defendant's aforementioned scheme and device, the said defendant, GERTRUDE KAY, alias Gertrude Klein, did on or about the 4th day of August, 1934, for the purpose of attempting to execute such scheme, place and caused to be placed

a letter dated August 4th, 1934, addressed and directed to the said Home Owners' Loan Corporation, at 350 Fifth Avenue, New York City, in an authorized depository for mail matter, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, to be sent and delivered by the Post Office Establishment of the United States, and to be delivered by mail according to the direction thereon, said letter bearing the typewritten signature of the aforementioned Laura Terrone and purporting to have been written and sent to the said Home Owners' Loan Corporation by the said Laura Terrone, and which letter, among other things, was intended to influence and expedite the action of the said Home Owners' Loan Corporation upon the said application for the said loan.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said letter was sent pursuant to the aforementioned scheme or device of the said defendant, GERTRUDE KAY, alias Gertrude Klein, in that the said defendant intended to influence the said Home Owners' Loan Corporation to grant the said loan in order that the said defendant would receive a sum greater in amount than the amount which was actually due to the said defendant on the said mortgage as aforesaid; all against the peace and dignity of the United States and contrary to the form of the Statute in such case made and provided (Title 18, United States Code, Section 338.).

58 SEVENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 29th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court,
59 did then and there unlawfully, knowingly, wilfully and feloniously solicit from Jennie Beyer and Philip Beyer a charge of Two Hundred and Fifty ($250.00) Dollars; that the said Jennie Beyer and Philip Beyer, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Jennie Beyer and Philip Beyer as their home and located
60 at premises known and described as 574 East 42nd Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, Gertrude Kay, alias Gertrude Klein, from the said Jennie Beyer and Philip Beyer, as aforesaid, was in connection with the said loan to the said

Jennie Beyer and Philip Beyer from the Home 61
Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Jennie Beyer and Philip Beyer, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and 62
dignity of the United States of America (Title 12, United States Code, Section 1467 (e)).

EIGHTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 29th day of July, 63
1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously contract with Jennie Beyer and Philip Beyer for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said Jennie Beyer and Philip Beyer, of a

charge of Two Hundred and Fifty ($250.00) Dollars; that the said Jennie Beyer and Philip Beyer, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Jennie Beyer and Philip Beyer as their home and located at premises known and described as 574 East 42nd Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge made as aforesaid, was in connection with the said loan to the said Jennie Beyer and Philip Beyer from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, Gertrude Kay, alias Gertrude Klein, to the said Jennie Beyer and Philip Beyer, in connection with the said loan; that the said contract for said charge made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

Indictment.

NINTH COUNT 67

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 30th day of August, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, 68
wilfully and feloniously charge one Felicia Sulfaro, and receive from said Felicia Sulfaro, the sum of Twenty-Five ($25.00) Dollars; that the said Felicia Sulfaro, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Felicia Sulfaro as her home and located at premises known and described as 2116 Bath Avenue, 69
in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge of Twenty-Five ($25.00) Dollars, so received as aforesaid by the defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Felicia Sulfaro, was in connection with the

said loan to the said Felicia Sulfaro from the Home Owners' Loan Corporation, and was a charge made for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Felicia Sulfaro, in connection with the said loan; that the said charge so received as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

TENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 21st day of April, 1934, the defendant, GERTRUDE KAY, alias Gertrude Klein, with intent to defraud one Felicia Sulfaro, did falsely assume and pretend to be an employee of and acting under the authority of a department of the Government of the United States, to wit: the Home Owners' Loan Corporation, and did take upon herself, the defendant, GERTRUDE KAY, alias Gertrude Klein, to act as such em-

ployee of the Home Owners' Loan Corporation, 73
and did in such pretending character demand and obtain from one Felicia Sulfaro the sum of Twenty-Five ($25.00) Dollars.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said defendant, GERTRUDE KAY, alias Gertrude Klein, well knew at the time and place aforementioned, to wit: on or about the 21st day of April, 1934, that she, the said defendant, GERTRUDE KAY, alias Gertrude Klein, was in fact and in truth not an employee of the said Home Owners' Loan Corporation, but that she fraudulently represented herself to be such employee of the said 74
Corporation for the purpose of obtaining the said sum of money, to wit: Twenty-Five ($25.00) Dollars from Felicia Sulfaro, upon the representation that she, the said defendant, GERTRUDE KAY, alias Gertrude Klein, would, in consideration of such payment, influence the said Home Owners' Loan Corporation in granting a loan, and expediting a loan, and helping the said Felicia Sulfaro to obtain a loan under and by virtue of an application filed by the said Felicia Sulfaro with the Home Owners Loan Corporation for a loan upon premises known and described as 2116 Bath 75
Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, which premises were owned by the said Felicia Sulfaro; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 18, United States Code, Section 76).

Indictment.

76 ELEVENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 5th day of June, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court,
77 did then and there unlawfully, knowingly, wilfully and feloniously solicit from one Liberata Benemerito a charge of Fifty ($50.00) Dollars; that the said Liberata Benemerito, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Liberata Benemerito as her home and located at premises known and described
78 as 1315—69th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Liberata Benemerito, as aforesaid, was in connection with the said loan to the said

Liberata Benemerito from the Home Owners' Loan 79
Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Liberata Benemerito, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United 80
States of America (Title 12, United States Code, Section 1467(e)).

TWELFTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 5th day of June, 81
1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously charge one Liberata Benemerito, and receive from said Liberata Benemerito, the sum of Fifty ($50.00) Dollars; that the said Liberata Benemerito, as the defendant well knew, was a person applying to the Home

Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Liberata Benemerito as her home and located at premises known and described as 1315—69th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge of Fifty ($50.00) Dollars, so received as aforesaid by the defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Liberata Benemerito, was in connection with the said loan to the said Liberata Benemerito, from the Home Owners' Loan Corporation, and was a charge made for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Liberata Benemerito, in connection with the said loan; that the said charge so received as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

Indictment.

THIRTEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 1st day of April, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from one Nellie R. Wilson a charge of Forty ($40.00) Dollars; that the said Nellie R. Wilson, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Nellie R. Wilson as her home and located at premises known and described as 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Nellie R. Wilson, as aforesaid, was in connection with the said loan to the said Nellie R. Wilson from the Home Owners' Loan Corporation, and was for alleged services rendered and

88 to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Nellie R. Wilson, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

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FOURTEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 1st day of April, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court,
90 did then and there unlawfully, knowingly, wilfully and feloniously contract with one Nellie R. Wilson for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said Nellie R. Wilson, of a charge of Forty ($40.00) Dollars; that the said Nellie R. Wilson, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and

amended April 27, 1934, entitled and known as 91
the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Nellie R. Wilson as her home and located at premises known and described as 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge made as aforesaid, was in connection with the said loan to the said Nellie R. Wilson from the Home Owners' 92
Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Nellie R. Wilson, in connection with the said loan; that the said contract for said charge made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United 93
States Code, Section 1467(e)).

FIFTEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 4th day of June,

94 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, for the purpose of influencing the action of the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, upon an application for a loan under said Home Owners' Loan Act, on property located at 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern Dis-
95 trict of New York, filed with the said Home Owners' Loan Corporation by said Nellie R. Wilson, said loan being for the purpose, among others, of refunding an indebtedness to said defendant, GERTRUDE KAY, alias Gertrude Klein, secured by a mortgage held and owned by the said defendant on said premises, did then and there, in a certain instrument known as Form No. 2 Revised, dated June 4th, 1934, and filed with said Home Owners' Loan Corporation, unlawfully, knowingly, wilfully and feloniously make to the said Home Owners' Loan Corpora-
96 tion a certain false statement in writing, to wit:

"Form No. 2 Revised

MORTGAGEE'S CONSENT TO TAKE BONDS

TO HOME OWNERS' LOAN CORPORATION:

The undersigned is a holder of a 2nd mortgage or other obligation, which constitutes a lien or claim on the title to the home prop-

erty of Nellie R. Wilson located at 3104 97
(Number)
Farragut Rd., Bklyn., N. Y. in the sum of
(Street) (City) (State)
$650. & 1 yr. Int., including unpaid balance of principal and interest, to date.

Being informed that said owner has made application to Home Owners' Loan Corporation to refund his said indebtedness, the undersigned has considered the method of refunding mortgages provided in Home Owners' Loan Act of 1933, as passed by Congress and approved by the President, and the undersigned hereby consents, if said refunding can 98
be consummated, to accept in full settlement of the claim of the undersigned the sum of $650. and 1 yr. Int., face value of the bonds of Home Owners' Loan Corporation, to be adjusted with not exceeding $25.00 cash and thereupon to release all the claim of the undersigned against said property.

It is understood that the Home Owners' Loan Corporation will incur trouble and expense in connection with its effort to refund the indebtedness of said home owner, and this consent is executed in consideration of the same and shall be binding for a 99
period of 30 days from date, and thereafter until 10 days written notice shall have been given the State manager of the Corporation.

This, the 4th day of June, 1934.

/sgd/ G. KAY
(Signature)
1904 Foster Ave.,
(Address)
Bklyn. N. Y.
Phone Number Mansfield 6/5026"

100 And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that in truth and in fact, as the defendant, GERTRUDE KAY, alias Gertrude Klein, well knew, there was not due to the defendant on said day and date last above mentioned, to wit: the 4th day of June, 1934, on the mortgage held by the said defendant, GERTRUDE KAY, alias Gertrude Klein, on the premises aforesaid, to wit: 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the sum of Six Hundred and Fifty ($650.00) Dollars, but that in truth and in fact there was
101 due to the said defendant, GERTRUDE KAY, alias Gertrude Klein, the sum of One Hundred and Fifty ($150.00) Dollars, as the said defendant then and there well knew; that the defendant, GERTRUDE KAY, alias Gertrude Klein, then and there well knew such statement as to the amount of the lien, claim and indebtedness so stated as aforesaid, to be false; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided (Title 12, United States Code, Section 1467(a)).

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SIXTEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, in the Borough of Brooklyn, County of Kings, City,

State and Eastern District of New York, and within the jurisdiction of this Court, before and at the time and times of the committing of the offenses in this indictment hereinafter set forth, did unlawfully, wilfully and knowingly devise a certain artifice and scheme to defraud one Nellie R. Wilson, and the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, and to obtain from said person and said corporation money and property by means of false and fraudulent representations, pretenses and promises. 103 104

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said scheme and artifice to defraud, and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations and promises, so having been devised by the said defendant, GERTRUDE KAY, alias Gertrude Klein, as aforesaid, was substantially as follows: that, as the defendant well knew, Nellie R. Wilson, was the owner of certain property located at 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and had, on or about the 1st day of April, 1934, filed an application for a loan on said property under and by virtue of the Home Owners' Loan Act of 1933 with the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, 105

and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, said loan being for the purpose, among others, of refunding an indebtedness to the said GERTRUDE KAY, alias Gertrude Klein, secured by a mortgage held by said defendant on the said premises; that as the defendant, GERTRUDE KAY, alias Gertrude Klein, then and there well knew, there was due to the said defendant as a balance on the said mortgage so held and owned by the said defendant, the sum of One Hundred and Fifty ($150.00) Dollars; that the said defendant, for the purpose of defrauding the said Nellie R. Wilson, and for the purpose of obtaining money from the said Home Owners' Loan Corporation by false representations, did for the purpose of attempting to execute said scheme, sign a certain false statement in writing, on or about the 4th day of June, 1934, in which the said defendant, GERTRUDE KAY, alias Gertrude Klein, set forth that she was, at the time of the execution of said statement, the holder of the second mortgage or other obligation constituting a lien or claim on the title of said premises aforesaid, located as heretofore set forth, to wit: at 3104 Farragut Road, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, in the sum of Six Hundred and Fifty ($650.00) Dollars; that in pursuance of the defendant's aforementioned scheme and device, the said defendant, GERTRUDE KAY, alias Gertrude Klein, did on or about the 15th day of August, 1934, for the purpose of attempting to execute such scheme, place and cause to be placed a

letter dated August 15th, 1934, addressed and 109
directed to the said Home Owners' Loan Corporation, at 350 Fifth Avenue, New York City, in an authorized depository for mail matter, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, to be sent and delivered by the Post Office Establishment of the United States, and to be delivered by mail according to the direction thereon, said letter being typewritten and bearing the typewritten signature of the aforementioned Nellie R. Wilson, and purporting to have been written and sent 110
to the said Home Owners' Loan Corporation by the said Nellie R. Wilson, and which letter, among other things, was intended to influence and to expedite the action of the said Home Owners' Loan Corporation upon the said application for the said loan.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said letter was sent pursuant to the aforementioned scheme or device of the said defendant, GERTRUDE KAY, alias Gertrude Klein, in that the said defendant intended to influence the said Home Owners' Loan Corporation to grant 111
the said loan in order that the said defendant would receive a sum greater in amount than the amount which was actually due to the said defendant on the said mortgage as aforesaid; all against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Section 338.)

112 SEVENTEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 30th day of September, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this
113 Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from Rosalie Abrimonte and Salvatore Abrimonte, a charge of Thirty ($30.00) Dollars; that the said Rosalie Abrimonte and Salvatore Abrimonte, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Rosalie Abrimonte and Salva-
114 tore Abrimonte as their home and located at premises known and described as 31 Tompkins Place, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Rosalie Abrimonte and Salvatore

Abrimonte, as aforesaid, was in connection with 115
the said loan to the said Rosalie Abrimonte and Salvatore Abrimonte from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Rosalie Abrimonte and Salvatore Abrimonte, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary serv- 116
ices; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

EIGHTEENTH COUNT

AND THE GRAND JURORS AFORESAID UPON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, 117
to wit: on or about the 30th day of September, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously contract with Rosalie Abrimonte and Salvatore Abrimonte, for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said Rosalie Abrimonte and

Salvatore Abrimonte, of a charge of Thirty ($30.00) Dollars; that the said Rosalie Abrimonte and Salvatore Abrimonte, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Rosalie Abrimonte and Salvatore Abrimonte as their home and located at premises known and described as 31 Tompkins Place, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge made as aforesaid, was in connection with the said loan to the said Rosalie Abrimonte and Salvatore Abrimonte from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Rosalie Abrimonte and Salvatore Abrimonte, in connection with the said loan; said contract for said charge made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

NINETEENTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: in or about the month of July, 1934, the exact date being to the Grand Jurors unknown, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from Salvatore Iovino and Jennie Iovino, a charge of one Hundred ($100.00) Dollars; that the said Salvatore Iovino and Jennie Iovino, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Salvatore Iovino and Jennie Iovino as their home and located at premises known and described as 1834 West 9th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by the said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Salvatore Iovino and Jennie Iovino,

as aforesaid, was in connection with the said loan to the said Salvatore Iovino and Jennie Iovino from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Salvatore Iovino and Jennie Iovino, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(c)).

TWENTIETH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: in or about the month of July, 1934, the exact date being to the Grand Jurors unknown, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously contract with Salvatore Iovino and Jennie Iovino for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said

Salvatore Iovino and Jennie Iovino, of a charge 127
of One Hundred ($100.00) Dollars; that the said Salvatore Iovino and Jennie Iovino, as the defendant well knew, were persons applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Salvatore Iovino and Jennie Iovino as their home and located at premises known and described as 1834 West 9th Street, in the Borough of Brook- 128
lyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge made as aforesaid, was in connection with the said loan to the said Salvatore Iovino and Jennie Iovino from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Salvatore Iovino and Jennie Iovino, in connection with the said loan; that the said contract for said charge made as 129
aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

130 TWENTY-FIRST COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 27th day of March, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then
131 and there unlawfully, knowingly, wilfully and feloniously solicit from one Bertha Redner a charge of Forty ($40.00) Dollars; that the said Bertha Redner, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Bertha Redner as her home and located at premises known and described as 1760—68th Street, in the Borough
132 of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Bertha Redner, as aforesaid, was in connection with the said loan to the said Bertha Redner from the Home Owners' Loan Corporation, and was for alleged services rendered and to

be rendered by the said defendant, GERTRUDE KAY, 133
alias Gertrude Klein, to the said Bertha Redner, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

TWENTY-SECOND COUNT 134

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 27th day of March, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously charge one Bertha Redner, and re- 135
ceive from said Bertha Redner, the sum of Forty ($40.00) Dollars; that the said Bertha Redner, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned

and occupied by the said Bertha Redner as her home and located at premises known and described as 1760—68th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge of Forty ($40.00) Dollars, so received as aforesaid by the defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Bertha Redner, was in connection with the said loan to the said Bertha Redner from the Home Owners' Loan Corporation, and was a charge made for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Bertha Redner, in connection with the said loan; that the said charge so received as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

TWENTY-THIRD COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

hereinafter referred to as the defendant, heretofore, to wit: on or about the 20th day of July, 1934, in

the Borough of Brooklyn, County of Kings, City, 139
State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously solicit from one Rosa Sciortine a charge of Three Hundred ($300.00) Dollars; that the said Rosa Sciortine, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on cer- 140
tain property owned and occupied by the said Rosa Sciortine as her home and located at premises known and described as 2022 East 12th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Rosa Sciortine, as aforesaid, was in connection with the said loan to the said Rosa Sciortine from the Home Owners' Loan Corpora- 141
tion, and was for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Rosa Sciortine, in connection with the said loan; that the said charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like

142 necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

TWENTY-FOURTH COUNT

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

143 hereinafter referred to as the defendant, heretofore, to wit: on or about the 20th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this Court, did then and there unlawfully, knowingly, wilfully and feloniously contract with one Rosa Sciortine for the payment to the said defendant, GERTRUDE KAY, alias Gertrude Klein, by the said Rosa Sciortine, of a charge of Three Hundred ($300.00) Dollars; that the said Rosa Sciortine, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation
144 organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27th, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Rosa Sciortine as her home and located at premises known and described as 2022 East 12th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their 145
oaths aforesaid do further present and say that
the said contract for the said charge made as afore-
said, was in connection with the said loan to the
said Rosa Sciortine from the Home Owners' Loan
Corporation, and was for alleged services ren-
dered and to be rendered by the said defendant,
GERTRUDE KAY, alias Gertrude Klein, to the said
Rosa Sciortine, in connection with the said loan;
that the said contract for said charge made as
aforesaid was not for an ordinary charge or fee
authorized and required by the said Home Owners'
Loan Corporation for services actually rendered 146
for examination and perfection of title, appraisal,
and like necessary services; contrary to the form
of the statute in such case made and provided,
and against the peace and dignity of the United
States of America (Title 12, United States Code,
Section 1467(e)).

TWENTY-FIFTH COUNT.

AND THE GRAND JURORS AFORESAID ON THEIR OATHS AFORESAID DO FURTHER PRESENT THAT

GERTRUDE KAY,
alias Gertrude Klein,

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hereinafter referred to as the defendant, heretofore,
to wit: on or about and between the 21st day of
July, 1934, and the 5th day of September, 1934, in
the Borough of Brooklyn, County of Kings, City,
State and Eastern District of New York, and
within the jurisdiction of this Court, did then and
there unlawfully, knowingly, wilfully and felonio-
ously receive from one Rosa Sciortine the sum of
One Hundred ($100.00) Dollars, a follows: on
July 21st, 1934, Fifty ($50.00) Dollars; on Au-

gust 4th, 1934, Twenty-Five ($25.00) Dollars; and on September 5th, 1934, Twenty-Five ($25.00) Dollars; that the said Rosa Sciortine, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933, as amended, for a loan on certain property owned and occupied by the said Rosa Sciortine as her home and located at premises known and described as 2022 East 12th Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said sum of One Hundred ($100.00) Dollars received as aforesaid by the defendant, GERTRUDE KAY, alias Gertrude Klein, from the said Rosa Sciortine, was in connection with the said loan to the said Rosa Sciortine from the Home Owners' Loan Corporation, and was a payment on account of a charge made for alleged services rendered and to be rendered by the said defendant, GERTRUDE KAY, alias Gertrude Klein, to the said Rosa Sciortine, in connection with the said loan; that the said payment made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, United States Code, Section 1467(e)).

Bill of Exceptions.

151

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

No. C 36222.

UNITED STATES OF AMERICA,

Plaintiff,

—against—

GERTRUDE KAY,

Defendant.

152

Brooklyn, N. Y., May 13, 1936.

Before—HON. MATTHEW T. ABRUZZO, *U. S. D. J.*, and a Jury.

APPEARANCES:

HON. LEO J. HICKEY, United States Attorney, by James G. Scileppi, Esq., Assistant United States Attorney, for the Government.

FRANK R. SERRI, ESQ., Attorney for the Defendant. 153

(A jury was duly empaneled, accepted and sworn.)

(Two alternate jurors duly empaneled and sworn.)

Mr. Scileppi: May it please the Court, Mr. Foreman and Gentlemen of the Jury, I mentioned

154 a moment ago that this defendant has been indicted by the Grand Jury of this district and the indictment charges her with twenty-five counts. Two of these counts, at the very outset, we are going to withdraw from your consideration, and they are counts which involve the use of the mails to defraud. We are not going into that phase of the case. We are going to submit it to you, Gentlemen, on twenty-three of the counts in the indictment.

Now, then, the Home Owners' Loan Corporation was organized pursuant to the Home Owners'
155 Loan Act, which was passed sometime in 1933, which made it possible for people who were in distress with respect to their homes to obtain loans from the Government. The Government established a fund of some two billion dollars and those people who were in distress at the time that the act was passed, or at the subsequent dates, as prescribed by the act, were permitted to make application with the Home Loan in order to refinance their properties.

At the time that this act was passed, in the wisdom of the legislators in Congress, they deemed it advisable to make it an offense, a crime, a
156 felony, a serious crime for anybody in any way to interfere with the operation of that act, particularly those persons who sought or attempted to obtain money from those people in distress. I am going to read to you briefly the two sections of the act so you will be able to follow me in the proof. Although there were twenty-five counts in the indictment, there are but ten transactions involved. If time permits, and if the Government may deem it necessary, we may go

into other offenses which this defendant committed, in order to show that there was a general scheme or plan—— 157

Mr. Serri: I object.

Mr. Scileppi (continuing): —a general plan—

The Court: Yes, I would leave that out of my opening address, Mr. Scileppi.

Mr. Scileppi: That is what I intend to prove.

Mr. Serri: I object to that.

The Court: There is great question whether you can prove that or not, and until that proof is offered, I would leave it alone.

Mr. Scileppi: All right.

(Mr. Scileppi continued making an opening address to the jury.) 158

(Mr. Serri made an opening address to the jury.)

The Court: Now, Gentlemen, you know both counsel, strictly, did not open up. They both summed up a little, but I let it go because I wanted you to get as clear a picture as you possibly could, but you will please remember that you have heard no evidence yet. You will wait until you hear the evidence to determine the facts.

You and I have a job here. My job is the law; yours is the fact. Take the law from nobody but me. The facts you are the sole judges of. Wait until you hear all these witnesses and wait until you hear my charge. In the meantime let me say, at the outset, please do not talk to anybody about the case at any time while you are here. Do not even discuss it with each other. Do not let anybody approach you and talk to you about it. If they do, report it immediately. The time to talk about this case, in so far as the facts are 159

160 concerned, Gentlemen, is when you get into your jury room and not one minute before then. Do not—let me say it to you again, as we adjourn:—Do not discuss it with your families, friends or anybody until you go into the jury room.

Mr. Scileppi: I heard counsel, in his opening, state that he was going to make some concessions. May we, for the purpose of shortening the trial and saving time, have the concessions?

The Court: I have been watching that. Suppose the concessions are made as your proof goes in? It is too general now and the jury would not understand it. You offer your evidence; as
161 the evidence is offered, that is the time to make the concessions.

NATHAN HATCHPOULOS, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Where do you reside, Mr. Hatchpoulos? A. 2289 Coney Island Avenue.

162 Q. How long have you resided there?

The Court: There is a man way down in the back who has to hear you. Will you raise your hand, Mr. Juror? That juror has to hear you. Talk loud enough so he can hear you.

The Witness: All right.

Q. How long have you resided there? A. The last ten years.

Q. Who owns the house? A. My mother-in-law. 163

Q. Do you own any part of the house? A. I don't. My mother-in-law owns the house. I am only taking care of it.

Q. You care for the house? A. Yes.

Q. Do you remember filing an application with the Home Loan? A. Yes, sir.

The Court: What is the address of this house?

Mr. Scileppi: 2289 Coney Island Avenue.

Q. Do you remember who signed the application for the Home Loan? A. My mother-in-law. 164

Q. Were you present when she signed it? A. Yes.

Q. Where was it signed at, do you remember? A. At the house.

Q. Was Miss Kay present when it was signed? A. At the time when I make the Home Loan, for the application?

Q. Yes. A. No, Miss Kay isn't there.

Q. When did you see Miss Kay? A. I saw Miss Kay two months after I filed the application.

Q. Where? A. At my house. 165

Q. Did she come alone? A. She came with another fellow.

Q. Do you know the other fellow? A. Yes, I know the other fellow.

Q. Who was the other fellow? A. He was a taxi driver.

Q. Do you know his name? A. I know his first name is Frank.

166 Q. What is your occupation? A. Restaurant business.

Q. How did you happen to meet this taxi driver? A. I was working in the restaurant at the time and he was a taxi driver outside, so we was talking about the Home Loan, and he says to me, "I got somebody," he says, "he can help you to get your Home Loan through." So I said, "All right." So that is the one that he brought me, Miss Kay, over to my house.

The Court: Is that this defendant, when you say Miss Kay?

167 The Witness: Yes, sir.

Q. When Miss Kay came over to your house, what did she say? A. She said, "I can be able to get your Home Loan through. It will cost you $40."

Q. What did you do? A. I gave her $20 on account, and $20 I did not have it at the time. I was supposed to give her $20 later, when she got through.

Q. What happened after you gave her this $20? Did she sign a receipt or any papers? A. She did.

168 Q. Where was that signed at? A. At my house.

Q. On Coney Island Avenue? A. Yes, sir.

Q. Do you remember what was on that paper? A. "I receive $20." It was supposed to be $40. I was supposed to pay $20 balance.

Q. Do you remember about what date it was that the defendant came to your house? A. I think it was July 26th.

Q. What happened after you gave her this $20 and she gave you a receipt? A. Well,——

The Court: What year was that? 169

The Witness: 1934. That was two months after I filed application for the Home Loan.

Q. Did you file that application yourself or did your mother-in-law, Mrs. Esther Dostis, file it? A. I filed it.

Q. I show you— A. The application of the Home Loan, you mean?

Q. Yes. I show you this document and ask you whether you have ever seen it before? A. Yes, sure.

The Court: You had better ask him did 170 he bring it over. He may not know what "file" is.

Q. What is it? A. That is the application I filed for the Home Loan.

Mr. Scileppi: I offer it in evidence. Any objection?

The Court: All exhibits, Mr. Scileppi and Mr. Serri, show to each other before they go into evidence.

Mr. Serri: No objection.

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(Marked Plaintiff's Exhibit 1 in evidence.)

Q. After this occasion on the 26th of July, 1934, when did you again see Miss Kay, this defendant? A. I didn't see her since after any time. When I needed anybody, and I got a letter from the Home Loan, then I used to call her up on the telephone.

Q. Did you call up often? A. Whenever I had

172 anything to do with the Home Loan, whenever I had any paper or any letter from the Home Loan, I told her what to do.

Q. Did she ever take you anywhere? A. No. Took me where? She never took me anywhere.

Q. Did she ever take you to any attorney's office? A. She did.

Q. When was that? A. That was the day before I received a letter from the Home Loan to go over and see somebody. I don't know what his name is. Mr. Craven. The day before I received a letter from Mr. Craven from Home
173 Loan to go over and see him.

Q. Mr. Craven? A. Mr. Craven, that is right.

Q. Did you ever speak to Mr. Craven? A. (No answer.)

Q. You mean an investigator from the Home Loan? A. I don't know. The man, I received a letter from him, to go over to the Home Loan, and ask me about the case of Miss Kay.

Q. Did you speak to him? A. Yes.

Q. After you received that letter did you communicate with the defendant? A. Yes.

Q. By telephone? A. By telephone, yes.

Q. What did you say to her? A. I told her
174 I got a letter from the Home Loan, what will I do? She says, "I will bring my chauffeur over and pick you up and bring you over to my house, and tell me what is what." So the chauffeur came in and I went over to the house. I showed her the letter. She says to me, "You don't need me. You can go over to the Home Loan yourself." That is all.

Q. Told you to go yourself? A. Yes, sir.

Q. Does your mother-in-law live with you? A. At that time? No, not now.

Q. Not at that time? A. No. 175

Q. You did go to the Home Loan, didn't you? A. She lived at that time; not now.

Q. I withdraw that. You did go to the Home Loan, didn't you? A. Yes.

Q. Who did you see there? A. Mr. Craven.

Q. And you spoke to Mr. Craven? A. Yes.

Q. After you spoke to Mr. Craven what did you do? Where did you go? A. I went out.

Q. Where, to your place of business, to your home? A. To my home.

Q. Did you see Miss Kay? A. No.

Q. When did you again see Miss Kay? A. I 176
didn't see Miss Kay since then.

Q. Did Miss Kay ever talk—ever give you back the $20 you gave her? A. Yes.

Q. When? A. She gave it to me the day before I went over to see Mr. Craven.

Q. At the time she gave you back this money what did she say? A. She said, "Here is your $20 that you gave me," and that is all she said to me. She didn't ask me no questions at all. She didn't say what you can do or nothing. She said, "Here is your $20."

Q. Did you ask her why she gave you back the $20? A. I did. 177

Q. What did she say? A. She says, "I give you the $20 back;" that is all. She never gave me no answer.

Q. Did she say anything about——

Mr. Serri: I object. He has already answered that she did not.

The Court: He hasn't put in a question at all, yet. He started.

178 Q. Was anything said about insurance?

Mr. Serri: I object to that. That is putting the things in the mouth of the witness. That is clearly leading.

The Court: That is leading.

Mr. Serri: Wait, now wait——

The Court: Mr. Serri, both of you men may not know my rule, but supposing you know it now: All objections must be made in legal form. I allow no colloquy between counsel or with the Court. If I am wrong, you may take your exception. That applies
179 to both of you.

Mr. Scileppi: I cannot take an exception.

The Court: If you think you should, take one. That question is ruled out as leading. Now go to the next one.

Q. After she gave you back that money, did you ever see Miss Kay again?

Mr. Serri: I object to that. That is answered. He said he did not.

The Court: He said he did not, but that
180 is not very material. He will probably say the same thing.

Q. Did you? A. No, I did not.

Q. Do you remember the date that Miss Kay came to your home? A. July 26th.

The Court: When she gave you the money back, I think he means.

The Witness: When she gave me the money back was September 20th, I guess. 181

The Court: Same year?

The Witness: Same year.

Q. That was at your home, wasn't it? A. What?

Q. When she gave you the money? A. She gave me the money in the lawyer's office. She gave me the money over, some place over on Court Street.

Q. Do you know the name of the lawyer? A. Leeds, I think. I don't remember what is the name of the lawyer. 182

Q. Do you see him here in court? A. I wouldn't recognize him.

Q. You would not know him if you saw him? A. I would not know him if I saw him. I only saw him once.

Q. Have you, as far as you remember, given us all the conversation that you had with Miss Kay? A. Yes.

Q. May I refresh your recollection: Did you at any time while Miss Kay was talking to you—did she tell you or say anything to you about buying insurance from her? 183

Mr. Serri: I object to that as leading.

The Court: I am going to allow it.

Mr. Serri: Exception.

The Court: Yes or no.

A. Buy insurance from her?

Q. What? A. She never mentioned, buy insurance from her, no, she didn't say; she only,

184 I asked her how she knows me; that Joe knows you; you bought insurance from me; she didn't ask me to buy insurance from her, but I used to buy insurance from her.

Q. Where did she tell you that? A. Well, the time when I got the letter from Mr. Craven, at the time I went over to the Home Loan.

Q. When she gave you back the money, did you inquire— A. No.

Q. (Continuing) —why she didn't want to take care of you? A. Yes, I told her, what is the reason? He says nothing. He says, "I will help you again, here is your money. Whatever I can
185 do for you", he says, "I will do it."

Q. Was there anything else? A. That is all.

Q. At that time, with respect to how you happened to know Miss Kay? Did she say anything to you? A. What is she was going to say?

Q. As to how you happened to meet her, aside from the fact that she told you to tell that you bought insurance— A. No.

Q. What did she say at the time she gave you back the money? What did she tell you with respect to how you met her? A. Nothing. She didn't say anything, how I met her, so she gave
186 me the money, that is all.

Q. If anybody were to ask you how you met her, she said you were to say you bought insurance from her?

The Court: He told you of two meetings. There is one when he got the letter, then another time when he got the money. Is that right?

The Witness: What is that?

The Court: When you got the letter from New York, you saw Miss Kay, is that right? 187

The Witness: Day before.

The Court: And she told you to go over yourself?

The Witness: Right—no—when I got the letter from New York, I saw Miss Kay. That is the day she gave me the money.

The Court: All happened at the one time?

The Witness: In the meantime I went home and I see the letter, I called up again in the morning. I said, "Miss Kay, I got a letter from the Home Loan; what will I do?" 188

The Court: That is the time she stated to you about your having met her through some insurance, is that right?

The Witness: Right.

Mr. Scileppi: That clarifies the situation.

Q. Now, then, did this Home Loan close? A. Yes, sir.

Q. Was Miss Kay present when the loan closed? A. No.

Q. Do you know whether or not your mother-in-law has a typewriter? A. Typewriter? No. 189

Mr. Serri: We admit now as to writing certain letters.

The Court: Show him any exhibit; if it is not conceded, you may prove it.

Mr. Serri: The defendant wrote that.

Mr. Scileppi: I will offer it in evidence.

Mr. Serri: No objection.

(Marked Government Exhibit 2 in evidence.)

190 Mr. Scileppi: It is dated August 28, 1934.

The Court: I think both of you had better know my rule on exhibits. As you introduce in evidence exhibits, if you want to pass them around to the jury, do so; if you want to make a statement, say so at the time the exhibit goes in evidence. If you get into any quarrel, I will stop you and make you read the exhibit. The jury should know now what the exhibit is.

Mr. Scileppi: May I read Exhibit 2 to the jury?

191 The Court: Gentlemen, I want you to know what the exhibits are the moment they go into evidence, so you will be able to follow it better. I take it there are going to be a lot of exhibits in the case and they will give them to you at the end.

(Mr. Scileppi reads Government's Exhibit 2 to the jury.)

The Witness: She did not sign that letter.

The Court: That is signed by——

Mr. Scileppi: It is conceded this letter was sent by the defendant Kay.

192 Q. Did you ever buy any insurance from this defendant? A. No, sir.

The Court: We will take a recess until two P. M.

(Recess until 2:00 P. M.)

(Met pursuant to recess at 2:00 P. M.; present as before.) 193

NATHAN HATCHPOULOS, resumed the stand:

Cross examination by Mr. Serri:

Q. You were not the applicant for the loan in this case? A. The what?

Q. You were not the applicant; it was your mother who was the applicant for the loan? A. Yes.

The Court: I think it is necessary that you use small words. 194

Q. The applicant. A. That is O. K., I understand. Go ahead.

Q. And your mother signed the application for the loan? A. Right.

Mr. Scileppi: Mother-in-law.

Q. Mother-in-law. A. Mother-in-law, right.

Q. And the mother-in-law was the owner of the premises? A. Right.

Q. How long has your mother-in-law lived over in New York? A. How long has my mother-in-law lived over in New York? 195

Q. Yes, how long has your mother-in-law lived over in New York? A. She don't live in New York.

Q. Where? A. At the time she lived there.

Q. When did she live in this house? A. She lived there at the time when I had the Home Loan, she lived there.

196 Q. No, when she filed the application, where did your mother-in-law live? A. At 2289 Coney Island Avenue.

Mr. Serri: At this time, your Honor, since it appears from the evidence that this witness was not the applicant, that the mother-in-law was the applicant for this loan; that the agreement was not with the applicant for the loan but with him; that whatever contract or payment was made was made with him and by him and not the applicant.

197 The Witness: The applicant too.

The Court: Wait a minute, keep quiet.

Mr. Serri: I move to strike out all the evidence with respect to the Dostis counts, the first three counts.

The Court: Motion denied.

Mr. Serri: Exception.

Q. Now, what is your name again? A. Hatchpoulos, Nathan,—call me the small name.

Q. Mr. Nathan, when you talked with Miss Kay the first time didn't you tell Miss Kay about the difficulty with the first mortgage, the payments
198 which you were making each month, and that you found it hard to make the monthly payments? A. I told Miss Kay that I had a bank—she asked me if I had a Home Loan. I didn't say anything. I said they were ready to foreclose on me.

Q. You told her that the first mortgagee was ready to foreclose? A. Right.

Q. And did you tell her that you were not able to make the monthly payments? A. Yes, same as any other house, same as every house.

Q. Did she say she would go to the first mortgagee and try to get them to wait? A. I am going to help you, she said, under these conditions, the same as I help anybody else. She—— 199

Q. Did she say——

Mr. Scileppi: I object.

A. Let me finish.

The Court: Let him finish.

The Witness: Let me finish.

The Court: If it should be stricken out, I will strike it out. I don't know whether it should be or should not until he gives it. Finish your answer. 200

The Witness: You interrupted me now. What is it?

Q. Did Miss Kay say, after you told her about your trouble with the first mortgagee— A. She asked, and I said yes.

Q. You told her that you were having trouble with the first mortgagee? A. Yes. That is why I went to the Home Loan, to have help for it, the same as any other house. 201

Q. And she said, did she, that she would go to the first mortgagee and try to make them stop or wait? Didn't she say that? A. She was going to the first mortgagee, the bank, yes, the same as anybody else. She was trying to help with the house. That is why I gave her the case.

Q. And after she went to the bank or the first mortgagee, you did not have to pay the monthly payments for some time? A. I paid——

202 Mr. Scileppi: I object, if your Honor please. There is no evidence to that effect.

The Court: I will allow it.

Mr. Scileppi: Assumes a state of facts; it assumes trips had been taken to the bank, and we do not know whether they were or not. What are the facts?

The Court: It is cross examination. I am going to rule that on part of this conversation the jury may find that she rendered services that were partially legal and they might find some of her services were partially not legal.

203 Mr. Serri: That, of course, is the question.

The Court: That is why I will allow it in.

Mr. Serri: Because we contend our services with the first mortgagee were absolutely legal, and that is all we charged for. That is the simple defense of this defendant.

Q. Now then, after she went to the bank and asked them to stop demanding the payments—you were paying what, $35 a month? A. I was paying just the same——

204 Mr. Scileppi: I object.

The Court: Just a minute.

Mr. Scileppi: On the ground that it assumes there were trips to the bank. The question is really two questions in one. It is assuming a state of facts not proven.

Q. Mr. Nathan, I show you——

Mr. Serri: Do you have any objection to that letter?

Mr. Scileppi: I don't know what the purpose is. 205

Mr. Serri: The purpose there is obvious, to show that he asked her to go to the bank and to help him out.

The Court: Pardon me. Show him the letter.

Q. Did you show that letter——

The Court: If it is offered in evidence, I will rule on it.

Q. Did you show that letter to Miss Kay or give 206
that letter to Miss Kay? A. Yes, she took that letter from me.

Q. Yes, and you asked her to go to the bank and she said she would go to the bank? A. Yes, certainly, she would take care of it.

The Court: Please answer the question.

Mr. Serri: Now I offer this in evidence.

Mr. Scileppi: No objection.

(Marked Defendant's Exhibit A in evidence.)

The Court: You had better wait and 207
read it.

Mr. Serri: Read it now?

The Court: Right after the admission.

Mr. Serri: All right (reading Defendant's Exhibit A to the jury).

Q. After you gave her that letter, Miss Kay went to see the bank and the first mortgagee for you, didn't she?

208 The Court: Wait a minute. I see the force of the objection is this: That he can only tell, if he went to the bank with her. What she told him she did is hearsay.

Mr. Serri: I am not asking—because he knows after that he did not have to make the payments, and that result is the best proof that she went.

The Court: Now, that is not proof, that is negative proof. You first ask him, did he go to the bank with her. If he says no, then you ask what the conversation was between them.

209 Q. Did you go to the bank with her? A. No.

Q. But she told you she had gone to the bank? A. (No answer.)

Q. And after that you stopped making the payments for a certain period of time? A. I didn't stop. I have to make them whatever I have, every last penny.

Q. No, during a certain period the bank waived payments, didn't they? A. One month.

Q. Wasn't it more than a month? A. That is all.

Q. Wasn't it from about May to September? A.
210 It was a month; but the bank would never wait for a month. If it wasn't for the Home Loan, I would be out in the street.

Mr. Serri: I move to strike it out as not responsive.

The Court: Yes.

Q. For a period of time you say that——

Mr. Scileppi: Part of that answer can 211
stand, I submit, that the bank would not wait.

The Witness: Would not wait is right.

The Court: That part can stand; the other part should go out.

Q. As a matter of fact, Mr. Nathan, didn't you stop your payments for at least three or four months? A. I didn't have anything. I didn't pay.

Q. Right, precisely, you didn't pay from May to September, did you? A. Not from May to September; not from May to September. 212

Q. I show you another letter in September that the bank sent you. A. Yes.

Q. So that from the first letter to the second— A. Whatever I had I gave——

The Court: Just a minute.

Q. Please. A. Pardon me.

Q. Between this first letter of May 29th and September 17th you did not make any payments, did you? A. He tells you there foreclosure every day I got those letters. 213

Q. Please answer the question. A. I am answering your question.

Q. No, please now——

The Court: Did you get that letter?

The Witness: Yes, I got that letter.

The Court: Did you give that to this lady?

The Witness: I gave everything to that lady.

214 Q. During the period from this first letter, May 24, to September, 1934, you did not pay the bank, did you? A. I beg your pardon. Say that again.

Q. From May, this first letter, 1934, to that second letter in September, you did not make the monthly payments? A. I don't know whether I make payments, I don't keep no track.

Q. Let us be perfectly honest: You don't know you didn't make any payments? A. I don't know. If I keep books——

The Court: Wait a minute. That question is excluded in that form.

215 Mr. Serri: I offer this letter in evidence.

Mr. Scileppi: No objection.

(Marked Defendant's Exhibit B in evidence.)

(Mr. Serri reads Exhibit B to the jury.)

Q. Now, after you showed this letter to Miss Kay, didn't she tell you this, that she tried to stop the foreclosure and that she couldn't, and said, here is your $20 back? A. That is why she came over there to give me help, that is what

216 she——

Mr. Serri: I object, if your Honor please.

The Court: No, answer the question, Mr. Witness.

The Witness: What is it?

Q. Mr. Nathan, please, I am asking questions— A. Yes, go ahead.

Q. And it is your job to answer them.

The Court: Just listen to this question and answer it. 217

Q. Didn't Miss——

The Court: The stenographer will read the question.

(Reporter repeated the last question.)

A. She didn't tell me about that, no. She was out to get——

Q. Now, please.

The Court: You have answered the question, now. 218

Q. Do you recall the date when you received back the $20, whether that was not September 18th, 1934? A. September 20.

Q. September 20? A. September 20th.

Re-direct examination by Mr. Scileppi:

Q. Now, at the time that you gave the $20 on behalf of your mother-in-law to the defendant was anything said about how soon the defendant would get the loan for you? A. 40 days. 219

Q. Was anything further said about other loans? A. And then she told me, when she gave me the $20, she says, when she called me there, she said, "Bring the deed over to the lawyer's office and bring the papers." I say, all right. I brought the deed, and when I went there, I said, "what do you want?" She says, "Give me the receipt that I gave you the money." I gave her the receipt.

220 She tore up the receipt and said, "Here is your money."

I said, "What is the matter, what are you giving me the money for?"

She says, "Well, I am giving you the money and you can have it." The only thing, she says, that whenever anybody asks you anything, how do you know me, just say I have been selling insurance to you.

Mr. Serri: I object to this as repetition.

A. (Continuing.) Nothing else.

221

The Court: It is only repetition.

Mr. Serri: But it is very prejudicial to the defendant. Exception.

Q. At the time that you brought those papers to the lawyer's office at the defendant's request, did she take the deed and other papers from you? A. She didn't look, no; she only took the receipt for the money,—the money that I gave her. She tore up the receipt. She said there is no question, nothing.

The Court: That is all, she took the re-

222 ceipt and tore it up.

The Witness: That is all, and she gave me the money.

Re-cross examination by Mr. Serri:

Q. Now, this question, when the Assistant District Attorney asked you for any additional conversations with Miss Kay, and asked you did Miss Kay say anything else, you said nothing more? A. I did say that.

Q. Now this afternoon you say that she added something about 40 days. Who suggested that? Did the agent, when you were called over to the Home Owners' Loan, suggest that to you? A. What did you say that time? 223

Q. Did any agent for the Government— A. Talk easy. If you talk that way, I cannot understand. We are not fighting now, just questioning.

Q. Please, sir, did any agent or anyone else suggest to you to make that answer about getting the loan in 40 days? A. What agent? She asked me.

Q. No agent suggested that? A. She told me that, that I get you the loan—— 224

Q. You didn't remember that this morning. A. I don't know any agent. I know she——

Q. This morning you were asked— A. Yes?

Q. And you did not say anything about 40 days this morning, did you? A. I wasn't asked. I am answering him. He has to ask me.

Q. Nobody asked you about 40 days? A. No, he asked——

Q. No, he asked you about conversations. A. Well, I don't know about conversations you asked. You make the talk plain.

Q. This morning the District Attorney asked you about any other conversation. This morning you did not say anything—pardon me—you did not say anything about 40 days. A. Conversation? 225

Q. This morning. A. Conversation? Mostly talking.

The Court: Just a minute. Will you listen? Neither one of you will get anywhere arguing. Just listen to the question.

226 The Witness: Your Honor, he asked about conversation, about conversation I understand and——

The Court: Just listen to the question, and wait until the question is finished.

The Witness: Right.

Q. This morning you were asked to tell what talks or conversations you had with Miss Kay, weren't you? A. Yes.

Q. And you were asked to tell everything? A. I told him, yes.

227 Q. Now, please. You were asked to tell everything that was said? A. Yes.

Q. And you told? A. Yes.

Q. And you were asked was there anything else and you said no. A. What will I say, yes to the question?

Q. Now then this afternoon.

The Court: What he wants to know is, this morning you said nothing about the 40 days.

The Witness: They don't ask me everything. I can remember everything, your

228 Honor.

The Court: No, what he wants to know is, did some agent tell you this afternoon to say 40 days?

The Witness: No, sir, nobody tell me anything.

Re-direct examination by Mr. Scileppi:

Q. Mr. Hatchpoulos, you came into the District Attorney's office and you signed a statement, an

affidavit before Commissioner Fay on the 14th of December, 1934, didn't you? A. Yes. 229

Q. You remember that? A. Yes.

Q. May I please ask you to look on page 7 of this affidavit.

Mr. Serri: I object to that absolutely.

The Court: Let him put the question.

Q. May I please ask you to look at page 7 of the affidavit, which is signed before the Commissioner in December of 1934, and tell me whether or not at that time when you made that statement, did you mention the 40 days that Miss Kay was to get you the loan in?—— 230

Mr. Serri: I object.

The Court: Sustained.

Mr. Serri: I move to strike it out.

The Court: There is no question. He did not answer it.

Q. Did you at the time when you made your statement, which you swore to before Commissioner Fay, did you at that time make the statement that the defendant would get the loan for you in 40 days? 231

The Court: Wait a minute. Do not answer.

Mr. Serri: Same objection.

The Court: Sustained.

Q. Did anybody at all speak to you today with respect to the question regarding the 40-day period? A. No, sir.

232 Re-cross examination by Mr. Serri:

Q. Mr. Hatchpoulos, you did not make any complaint to the HOLC, did you, to the Home Owners' Loan Corporation about Miss Kay? A. Complaint?

Q. You did not make any complaint? A. No, I didn't know anything about it.

Q. Will you please answer the question? A. No, no, I didn't make any complaint.

Re-direct examination by Mr. Scileppi:

233 Q. When you paid this $20 to Miss Kay, did you pay her on behalf of your mother-in-law?

Mr. Serri: I object to that.

The Court: I am going to rule it was an agency, Mr. Scileppi. That is why I am allowing the matter in.

Mr. Scileppi: I have the mother-in-law here.

The Court: It doesn't matter whether the mother-in-law paid it or not.

Q. Did you tell your mother-in-law about paying that $20? A. Yes.

234

Mr. Serri: I object to it as immaterial.

The Court: Yes, it is.

A. (Continued.) I did.

The Court: Sustained.

(Witness excused.)

Mr. Scileppi: This witness will require the assistance of an interpreter.

(Interpreter Plato Papson, duly sworn.)

ESTHER DOSTIS, called as a witness on behalf of the Government, being duly sworn, testified as 235
follows (through the interpreter):

Direct examination by Mr. Scileppi:

Q. Mrs. Dostis, are you owner of premises 2289 Coney Island Avenue? A. Yes.

Q. Mr. Hatchpoulos, the former witness, is your son-in-law, is he not? A. Yes.

Q. Married to your daughter? A. Yes.

Q. And he lives in your house, is that correct? A. Yes.

Q. Do you remember giving $20 or do you remember when your son-in-law gave $20 to Miss 236
Kay, the defendant here? A. I was not present when he gave the money to her.

Q. Do you remember Miss Kay coming over to see you at Orchard Street? A. Yes.

Q. Who did the defendant come with? A. With my son-in-law.

Q. Had your son-in-law already given her the $20?

Mr. Serri: I object, if your Honor please. She was not present; does not know about it.

The Court: Excluded. Sustained.

(The interpreter continues speaking in Yiddish.) 237

Mr. Serri: I object.

Mr. Scileppi: Object to what, that last question?

Mr. Serri: Yes, she was not present. The Judge sustained my objection.

The Court: Just ask her if her son-in-law was handling the proposition.

238 Q. You say that the defendant and your son-in-law came over to Orchard Street to look you up one day, is that correct? A. Yes.

Q. What did they talk to you about when they came to see you? A. My son-in-law told me that I have to sign a piece of paper, and this paper was relative to our getting a loan for the house.

Q. Who made the paper out? A. The paper was made out and I just made a cross on that piece of paper.

Q. Who were you signing that paper for, was it for your son-in-law or for Miss Kay or for
239 the Home Loan, or who? A. My son-in-law told me to make a cross on that piece of paper and I did, because he handles all my business for my house.

Q. And was anything said about the $20 that had already been given to Miss Kay on that occasion? A. My son-in-law told me that he gave $20 to this woman.

Q. Was there anything said as to whether or not more money was to be given to the defendant?

Mr. Serri: I object as very leading, it is putting words into the mouth of the witness.

240 The Court: No; overruled.

Mr. Serri: Exception.

A. She told me that after a while I have to give some more money.

Q. While Miss Kay and your son-in-law were present on this occasion was anything said as to what this money was given to Miss Kay for? A. No, I didn't ask any more than that.

Q. The paper which you signed, was it a paper

in connection with the Home Loan or was it in connection with something else? A. It was for the house, meaning Home Loan. 241

Q. You cannot read, can you? Of course not. A. No.

Q. And you cannot even speak English? A. (No answer.)

Cross examination by Mr. Serri:

Q. Mrs. Dostis, when you made your cross on that paper were you at Orchard Street? A. I was in my daughter's home that particular day.

Q. But you actually on that day, you were living in Orchard Street, New York, weren't you? A. I live all around with my different children. I live in Coney Island, over there, and Sea Beach, and so on. 242

Q. But on April 19, 1934, you were living at Orchard Street? A. My daughter was sick that week and I was staying that week with her to take care of her.

Q. You were simply visiting your daughter in Coney Island because of her sickness? A. The home in Coney Island is my home.

Q. I did not ask that question. 243

Mr. Serri: I move to strike that out as not responsive.

Mr. Scileppi: I think it is a proper answer.

Mr. Serri: That is absolutely improper.

The Court: No colloquy. I will let the answer stand.

Mr. Serri: Exception.

244 Q. I repeat my question: On April—in April, 1934——

Mr. Scileppi: I object on the ground that the question has already been answer.

The Court: Wait until he puts it.

Q. On April 19th, 1934, while you were living at Orchard Street, New York, you visited your daughter in Coney Island because of her sickness? A. I was living all around with my children.

245 Mr. Serri: I move to strike that out as not responsive to my question.

The Court: I will let it stand.

Ask her directly where she was living on that day.

Mr. Serri: She said Orchard Street.

The Court: I understand. Orchard Street, or Coney Island, I do not see the materiality.

Mr. Serri: Now, wait, please, may I make this comment? It is very material because part of the indictment reads owned and occupied by the applicant. It must be an appli-
246 cant who not only owns the house but occupies the house and she clearly did not occupy it and therefore was clearly not an applicant within the law.

The Court: You ask her questions and make your arguments later, and you will find I will clear that up with the jury very easily, Mr. Serri. I think you are looking for a technical defense here, that I am not going to submit to the jury. I am not going to get into any argument with you.

Did you live on Orchard Street in April, 1934? 247

Tell her to answer yes or no.

The Witness: Yes.

Q. How long before that had you been living at Orchard Street? A. I stayed one month or two years with my children all around.

By the Court:

Q. Did you own this house on Coney Island Avenue? A. Yes.

Q. Who lived there? A. My son-in-law.

Q. Did you live there at times too with him? 248
A. Yes.

Q. Did you have a room there of your own? A. Yes.

Q. And you would go there to live any time you wanted? A. Yes.

Q. And on Orchard Street, did you have some other daughter living there? A. Yes.

The Court: That is all.

Mr. Scileppi: No questions after that.

The Court: Any further questions?

Mr. Serri: No further questions.

The Court: Next witness. 249

(Witness excused.)

ROSA SCIORTINE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Do you know the defendant, Gertrude Kay? A. Yes.

250 Q. Do you own 31 Tompkins Place, Brooklyn? A. Yes.

Q. How long have you owned it? A. 12 year.

Q. Did this defendant have a mortgage on your premises?

The Court: Do you see this man way back there in the jury box? He must hear what you say. Will you try and talk up?

The Witness: Want me talk out loud?

The Court: Yes, surely.

Q. Now, you have always spoken through an
251 interpreter. Would you rather speak through an interpreter or do you think we can get along?

The Court: I think you had better use an interpreter.

Mr. Scileppi: We have always had one with her.

(John D. Pasquale, duly sworn as an interpreter.)

(The witness continued her testimony through the interpreter.)

(Reporter repeated question as follows: "Did this defendant have a mortgage on your
252 premises?")

A. No.

Q. How long have you known the defendant? A. Since the time I got my loan. The loan I got about three years already now—about two years now.

Q. You are talking about the Home Loan, correct? A. Yes, talking about the Home Loan, about two or three years.

Q. How did you happen to meet this defendant? 253
A. I was about to get a Home Loan and a friend of mine told me to go to Miss J. Kay, that she would help me get the loan, and I went to Miss J. Kay, and she said, yes, I'll help you get the loan.

Q. Just a minute, just a minute. Will you please give us the latter part of that answer? A. A friend of mine told me to go to Miss J. Kay and I went to Miss J. Kay and she says, yes, I'll help you get the loan.

Q. Was anything said about a month?

The Court: Was anything said about the 254
time?

A. In about a month's time I will get the loan.

The Court: But who said that?
The Witness: Miss J. Kay.

Q. Is that the lady (indicating) there, that said that, indicating the defendant? A. Yes.

Q. Who made out the application for the Home Loan? A. I did.

Q. I show you this paper and ask you if you 255
have ever seen it before? A. When I made the application, yes.

Q. That is the application for the Home Loan? A. (No answer.)

Q. Is that your signature on there? A. (No answer.)

Q. Now, please look at the bottom of it and tell me if that is your signature? A. Yes, that is the signature of my husband and myself.

256 Mr. Scileppi: I offer it in evidence, if your Honor please.

Mr. Serri: No objection.

(Marked Government's Exhibit 3 in evidence.)

The Court: That is the regular, ordinary loan application? That is the ordinary application that they all make, the same form? So there is no sense reading it to the jury.

Mr. Scileppi: No, I don't intend to read it.

257

Q. Did you give the defendant any money for putting this loan through for you? A. No, but she told me that she would reduce the amount of the second mortgage and whatever the reduction would be, we would go half and half.

Q. And then you did not give her any money, did you? A. Yes, after that I gave her a hundred dollars when the loan was closed.

Q. How did you give her the hundred dollars?

The Court: You had better give us that a
258 little at a time. You had better stop with it when you think you have enough. (Addressing the interpreter.) Go ahead.

A. The second mortgage was reduced $200 and after the loan was closed she came to me and said that she had reduced the first mortgage $400 and the second mortgage $200, which made a total of $600, and that I should give her $300, which was half of the reduction, but I said, you didn't reduce

the first mortgage. (In English.) No, my son reduced the price. (Through interpreter.) My son reduced the first mortgage. (In English.) Yes, and a lawyer. 259

The Court: You had better talk Italian, madam.

A. (Continuing through interpreter.) When the loan was closed there wasn't sufficient money to close the loan. So my son called up the first mortgagee and the first mortgagee reduced his price and took only $9000, which was through my efforts, not hers, and after that she came to my house and said, "I reduced the mortgages $600; $300 for you and $300 for me." I said, "No, you didn't reduce them." 260

Then she says to me she wanted some papers signed; that I should give her $300, and I didn't want to sign, and she says to me, "If you don't sign, I will bring you to court; you must give me $300."

I says, "You don't deserve it." Then after a while I was disgusted, and I said, "All right, I'll sign it." Then I gave her $50 the same day, and $25 every month—two months, $25 a month. 261

Then I could not give her any more because my husband came sick and I could not pay, and the last time she come she says, "If you won't give it to me, I will do something different, I helped you so much to get this loan."

I says, "The lawyer for the Loan Company got the loan for me. You didn't do anything," and she says, "No, it was through me that you got the loan."

262 The Court: Is that all, Mr. Scileppi?

Mr. Scileppi: Just a minute, sir. May I please show you this check, blank check, and ask you whether or not you have ever seen it before?

Mr. Serri: We admit receipt of the $100, if that is what he wants to prove—Mr. Scileppi?

Mr. Scileppi: I offer it in evidence.

The Court: Better look at it.

Mr. Serri: If it is offered to prove the $100 payment, we concede that.

263 The Court: Offer it in evidence and mark it and then read it.

(Marked Government's Exhibit 4 in evidence.)

The Court: Now, read it, Mr. Scileppi.

(Mr. Scileppi reads Exhibit 4 to the jury.)

Q. Was Miss Kay present at the time the Home Loan closed? A. Yes.

Q. Did she come to your house very often during the seven or eight months before this loan
264 was closed? A. Yes.

Mr. Scileppi: That is all.

Cross examination by Mr. Serri:

Q. Mrs. Sciortine, did you receive this letter? A. I don't know. I don't know what is in the letter.

Q. I did not ask you what is in the letter. I

asked, did you receive it and— A. I never re- 265
ceived any letter. Miss Kay always came to the house.

Q. Please look at that letter and see if it is not addressed to Mr. Joseph Sciortine, and if you did not receive it and turn it over to Miss Kay?

Mr. Serri: I have asked a simple question, your Honor.

The Court: I cannot assume I know what she is saying. I know what she is saying, but I cannot assume it. He will have to give the answer.

266

A. During the pendency of this loan I received a notice that they were starting a foreclosure, and if that is this letter, I cannot read it.

Mr. Serri: Will you translate it to her? That has nothing to do with foreclosure. That is from the Home Owners' closing attorney, saying, we are ready to close the loan.

Mr. Scileppi: Before the interpreter——

The Court: To her husband?

Mr. Serri: Yes.

The Court: I believe I can simplify it. 267
Look at that letter.

The Witness: Yes, I look at the letter.

The Court: Did you ever see that letter, yes or no? Yes or no, that is the answer. No, no, please. If you don't remember, say so.

The Witness: I cannot say yes or no because I did receive a letter and I don't know whether this is the one.

268 Q. And did you give that letter to Miss Kay?

Mr. Scileppi: I object, if your Honor please. I mean, how can she answer that question?

The Court: Do you recall ever giving that letter to Miss Kay? Look at the letter.

The Interpreter: She wants to know what is in the letter.

The Court: First read it to her.

(Interpreter reads the letter to witness.)

The Court: Just a minute, now. Do you remember now that you gave that letter to
269 Miss Kay?

The Witness: I did get a letter from the Home Loan, that the loan was ready to close, and probably this is the letter.

The Court: And—not probably—did she give it to Miss Kay?

The Witness: I don't remember.

The Court: Now, that is enough.

Q. Isn't it a fact that after you got that letter you went to Miss Kay? A. (In English.) Oh, no; oh, no.

270

The Court: Wait a minute. Will you instruct her to wait until you put the questions to her, please? Tell her.

Q. Do you know the date of that letter? A. No.

Q. How could you answer then as to when you went to see Miss Kay?

Mr. Scileppi: Now, may I ask your Honor again to request the interpreter to tell——

The Court: Give her a sentence at a time. Do not give it to her too long, because you lose it. 271

Mr. Serri: May I withdraw that and start this way?

The Court: The question is withdrawn.

Q. This letter is dated June 15, 1934, from the Home Owners' Loan Corporation——

Mr. Scileppi: Unless the letter gets into evidence——

Mr. Serri: It will get into evidence.

Mr. Scileppi: I object at this time, referring to it or reading or using any of the data in that letter unless it is first in evidence. 272

The Court: Mark it for identification.

(Marked Defendant's Exhibit C for Identification.)

Mr. Serri: All I am referring to is the date. That letter is dated June 15, 1934.

Mr. Scileppi: Again I must object to anything that is not in evidence.

The Court: You put your question in abstract form without referring to the letter. She admits she got the letter. 273

Mr. Serri: The date is very important, Judge, because we came into this picture——

The Court: You cannot use that letter because she said she did not remember whether that was the letter she got or not. It is not a question of her——

274 Mr. Serri: No, she says probably she got it all right. She wasn't sure whether she handed it over to Miss Kay or not. I will prove she did hand it over to Miss Kay.

The Court: You mean in your defense?

Mr. Serri: Yes. The date is June 15, 1934.

The Court: Put the question directly.

Q. On June 15, 1934, did you get a notice from the Home Owners' Loan closing attorney? A. I don't remember.

275 Q. Was it about that time?

The Court: Now, now.

Q. Please, was it June 15th?

The Court: If she doesn't remember it, tell her to say so.

The Interpreter: She goes off into a story. She doesn't give the answer first.

A. (In English.) I don't remember. I cannot remember. I got enough.

276 Q. Do you remember you signed an agreement a few days after the date of June 15th, 1934, with Miss Kay? A. The year 1934 I remember, but the exact date, I don't remember.

Q. I show you a paper and ask you if you signed that on June 20th, 1934? A. Yes, that is my signature.

Mr. Serri: I offer that in evidence.

(Marked Defendant's Exhibit D in evidence.)

The Court: Better read it to them. 277

(Mr. Serri reads Exhibit D to the jury.)

Q. How much of a reduction was obtained from the second mortgage, Mrs. Sciortine? A. Through her efforts $200; and $50 through my efforts in the office.

Q. How much was the second mortgage? A. I don't remember, but it must have been about a thousand or eleven hundred dollars.

Q. Eleven hundred dollars is correct, isn't it? A. Yes, eleven hundred dollars, I think.

Mr. Serri: Have you got the application? 278
Does that state eleven hundred there?

May I ask the Government to produce the closing statement, rather, the closing statement?

So we are agreed the second mortgage was $1100, is that right (addressing Mr. Scileppi)?

How much does the closing statement allow the second mortgagee (addressing Mr. Scileppi)?

The second mortgage was $1100 on the statement or on your closing?

How much is it on the application? 279

Mr. Scileppi: $1000.

Mr. Serri: $1000 on that?

Mr. Scileppi: Yes.

Mr. Serri: Is it $1100 on any other? A thousand there?

Do you agree then that on the application or on the papers which you have it is a thousand dollars?

Mr. Scileppi: That is what appears here.

280 Mr. Serri: Is it conceded it appears on the closing statement that $350 only was paid the second mortgagee, is that conceded? Or shall I offer the closing statement in evidence?

Mr. Scileppi: That will be conceded.

Mr. Serri: Conceded that the second mortgagee received $350; that the amount of the second mortgage according to the application was a thousand dollars.

Now, Mrs. Sciortine——

The Court: Does your closing statement show any reduction on the first mortgage?

281 Mr. Serri: I am coming to that, Judge.

Q. What was the amount of the first mortgage?

Mr. Serri: Well, Mr. Scileppi, may I ask you what the——

The Court: Can't you give us the figures from the closing statement?

Mr. Serri: From the closing statement how much was the first mortgage?

The Court: And what was paid.

Mr. Serri: And what was paid on the first mortgage?

282 Mr. Scileppi: $9000 principal.

The Court: The principal was $9000. What was accrued interest?

Mr. Scileppi: $305.78.

The Court: Paid in full?

Mr. Serri: How much was the first mortgage and interest, the total, wasn't it $9,630?

Mr. Scileppi: No.

Mr. Serri: Please check those figures.

The Court: Better look at the closing statement yourself.

Mr. Serri: The total then is $9558.50. 283
Conceded; and on the first mortgage, paid the first mortgagee $9305.78.

The Court: A saving on the first mortgage of $200, and on the second mortgage——

Mr. Serri: A saving of $253, roughly, and a saving of $659 on the second mortgage, making a total saving of about $900.

Q. Now, Mrs. Sciortine, do you know that Miss Kay got in touch with the first mortgagee both personally and by letter? A. Yes, personally, and he refused to reduce.

284

Mr. Serri: I move to strike that out. I asked a simple question.

The Court: Refused to reduce is stricken out.

Q. Now, please answer the question.

The Court: She says, personally, yes.

Mr. Serri: I did not hear the answer.

The Court: She said, personally, yes, and he refused to reduce, and I will strike out the last part.

285

Read the answer.

(Reporter repeated the answer.)

The Court: And the last part of the answer is stricken out.

Q. And do you know she had considerable correspondence, receiving a number of letters from the first mortgagee? A. Yes.

Mr. Serri: No further questions.

286 The Court: What was the closing date there for the record?

Mr. Serri: The closing date is July 20, 1934.

By Mr. Serri:

Q. Didn't you engage Miss Kay after you got a letter from the closing attorney for the Home Owners telling you that the loan was to close? A. Yes.

Mr. Serri: That is all.

287 The Court: Look at this letter, that you signed. See that paper?

The Witness: Yes.

The Court: Is that the first time that you engaged Miss Kay, when you signed that paper?

Now, now, that is a very simple question. You signed that paper?

The Witness: Yes, that is my signature.

The Court: Now, did you see Miss Kay before you signed that paper at any time?

The Witness: No.

288 Mr. Scileppi: May I ask whether your Honor was referring to the document dated June 30th, 1934?

The Court: That is the first time she ever saw Miss Kay.

Re-direct examination by Mr. Scileppi:

Q. Now, tell us something about this second mortgage that has been referred to as in the

amount of a thousand dollars and for which the 289
owner agreed to take $350? Did you pay any more than the $350? A. It was a thousand dollars and the second mortgage took $750.

Q. When? A. The day we closed the loan.

Q. He took $750 in cash? A. Yes.

Q. Is that money you paid? A. The loan paid part by check and balance I paid in cash.

Q. That is, the loan paid $350 and you paid the balance in cash? A. Yes.

Q. Out of your own pocket? A. Yes.

Q. So that the second mortgagee got $750? A. Yes.

290

Q. That is on this loan wherein you set forth that the second mortgage was $1000? A. Yes, a thousand dollars.

Q. And the Home Loan, according to the figures in the closing statement, indicate that they allowed $350 on that mortgage, is that correct? A. $350 from the Home Loan and $400 I gave myself.

Q. Now, may I ask another question: Did anybody from your family speak to the second mortgagee? A. Yes.

Q. Who? A. My son at the office.

Q. In what office? A. Where the loan was 291
closed.

Q. Before that had your son spoken to her? A. No.

Q. Did anybody else from your family speak to the second mortgagee? A. I myself.

Q. When was that? A. Before Miss Kay spoke to the second mortgagee I spoke to him.

Q. Was the second mortgagee willing to reduce the mortgage? A. He did not wish to reduce it

292 and through her efforts he reduced $200 and through my efforts $50.

Q. That is the only reduction that was made on that second mortgage? A. That is all.

Re-cross examination by Mr. Serri:

Q. Mrs. Sciortine, did you get a receipt for your payment of $400 from the second mortgagee? A. I don't remember but I think I signed something.

Q. Have you got any receipts showing payment of $400 to the second mortgagee? A. I don't remember if I got any receipt or not.

293 Q. Where did you pay him this $400? A. In the office at the same time when the loan was closed, in the office of the attorney who closed the loan for the Home Owners' Loan.

Q. Did the closing attorney see you pay the $400 to the second mortgagee? A. Sure, everybody.

Mr. Serri: May I ask the Government if the closing statement shows any notation of any $400 extra being paid to the second mortgagee?

294 Mr. Scileppi: Now, counsellor, if you want the closing statement——

Mr. Serri: All right, I will produce it in evidence.

Mr. Scileppi: Go ahead.

Mr. Serri: I offer the closing statement in evidence.

The Court: I am not going to clutter up the evidence——

Mr. Serri: I asked him, does it show——

The Court: Why don't you look at it and 295
tell me what it says.

Mr. Serri: I thought they could tell immediately. It doesn't show payment of $400. It shows only payment of $350. There can be no dispute about it.

The Court: What does it show, $350 or $750?

Mr. Scileppi: $350.

Re-direct examination by Mr. Scileppi:

Q. Where did you get the $400 to give the 296
second mortgagee? A. I collected the Home Loan and I borrowed it from some relatives in order to close the loan.

Mr. Scileppi: Give us the last part of that answer.

The Interpreter: I collected the loan——

Mr. Scileppi: The part she said otherwise the loan could not close.

The Court: It is perfectly apparent the Government could not close otherwise.

Mr. Scileppi: I want to have the answers, Mr. Interpreter. 297

Q. Would the loan have closed if you could not get that $400?

Mr. Serri: I object to that. The closing statement shows only $350. That is proof enough the Government was ready to close.

The Court: Both of you are adopting a perfectly foolish attitude, it seems to me, be-

298 cause on my figures she did not get what she should have gotten under her contract, and under her figures either, because you say $650 according to you, plus $250, which would be $900, she would be entitled to $450. She admits she got $300.

Mr. Serri: $100 only.

The Court: But she signed a paper to get $350.

Mr. Serri: To get 50 per cent. of what she saved.

The Court: But this lady says she signed a note for $300, so she got less on either.

299 Mr. Serri: We got only $100, much less than we are entitled to under our contract.

Mr. Scileppi: But if she got 5 cents, it is an agreement.

The Court: Don't bother yourself about the little details, that I do not think are very important.

Mr. Scileppi: No.

By Mr. Scileppi:

Q. Did you have any discussion with this defendant about this $400 the second mortgagee was
300 to get? A. The second mortgagee had refused to close the loan if I did not give him the cash.

Q. And he insisted on how much? A. He wanted the whole amount, $750.

Q. And according to the money which you got from the Home Loan you could only allow the second mortgagee $350, isn't that correct? A. Yes, that is correct.

Q. That is, allocating the amount that the Home Loan was willing to advance after pay-

ing your taxes and paying the amount required 301
to be paid on the first mortgage, there was only $350 left for the second mortgagee, isn't that correct? A. Yes.

Q. But the second mortgagee would not close for $350, would he? A. Yes.

Q. And that is why you gave that additional $400?

Mr. Serri: I object. This is repeating the testimony.

The Court: It is all in evidence.

Mr. Serri: It is already in.

302

Q. Was your son present when you gave those $400? A. Yes.

Q. Do you remember the name of the closing attorney? A. I don't remember—Mr. Renner—Mr. Aren.

Q. Now, besides your son, who else was present, was there anybody else present, any member of your family present at the time of the closing? A. Miss Kay, second mortgagee, my son, my husband, I, and that is all—four. Also Mr. Conckle for the second mortgagee.

Q. Did your husband receive a subpoena? A. He cannot be here. He has one leg off. He cannot walk. 303

Q. Is your husband sick? A. Yes, he is in bed, with one leg. The other leg is bad.

Q. And that is why he cannot come here? A. He cannot come here. He is in bed.

Re-cross examination by Mr. Serri:

Q. After the matter was closed you did agree to pay Miss Kay $300 for the services she had ren-

304 dered in reducing the first and second mortgages, didn't you? A. Because she threatened to bring me in court and cause a lot of trouble for me. She didn't deserve it.

Q. But you did sign a paper agreeing to pay her $300? A. Yes, to get rid of her.

Mr. Serri: Well——

The Court: I will strike it out.

How long after the loan closed did you sign that paper?

The Witness: About two days, two or three days.

305 (Witness excused.)

SALVATORE ABRIMONTE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Abrimonte, do you know the defendant, Gertrude Kay? A. Yes.

306 Q. How long have you known her? A. No speak English.

The Court: All right; speak through the interpreter.

Gentlemen, we will take a five-minute recess.

(Recess taken.)

Mr. Scileppi: May I withdraw the Abrimonte witness and call Sidney Meranus.

SIDNEY MERANUS, called as a witness on behalf of the United States, having been duly sworn, testified as follows: 307

Direct examination by Mr. Scileppi:

Q. Mr. Meranus, you were a closer for the Home Owners' Loan Corporation? A. That is correct.

Q. Did you close the loan involving the Sciortine loan? A. Yes.

Q. Do you remember when that closed? A. Well, I could refresh my recollection.

Q. Was it the 20th of July, 1934? A. I don't remember offhand the date.

Q. If it shows here, I suppose that is the date, isn't it? A. Yes. 308

Q. Now, then— A. That is right.

Q. Do you remember on that occasion whether this defendant, Kay, was present? A. Yes, I think she was there.

Q. Mrs. Sciortine was present, do you remember her? A. Yes.

Q. And her son? A. I believe he was present.

Q. Do you remember what the transaction was with reference to the second mortgage? A. (Referring to papers.)

309

The Court: Well, Mr. Scileppi, might I find out: You were a closer, is that right?

The Witness: Yes.

Q. Who were you closing for? A. Home Owners' Loan Corporation. I was closing attorney.

The Court: How were you paid, by salary, or just by the case?

310 The Witness: I was paid by the case. The Government paid us for every closing.

The Court: You mean in closing this case you were paid by the Government?

The Witness: That is right.

The Court: Not by this lady, Sciortine?

The Witness: No.

The Court: The Government direct made an allocation to pay you for your services?

The Witness: Yes.

The Court: You see, I would like to clear that up for the jury.

311 A. I do remember this, now, looking at these files, of course, I remember the names, now that I refresh my recollection. There was some difficulty with the second mortgagee, which was Frieda Kiendl, and I also remember she had some relative who was a lawyer, and there was some difficulty in straightening out her claim. There was not enough money approved by the H. O. L. C. to pay all claims involved, and she sent in a consent evidently for $1,000.

Q. $350, I believe. A. No, no, that is a claim of $1,000, but she got $350 in bonds, for which
312 it is my practice, no matter how many consents I have in the file—I am even closing loans today—I make it my practice to have the consents signed on the day of closing for the exact amount as the claimant receives.

The Court: From the Government?

The Witness: From the Government in bonds.

Q. Was there any additional money given, do you know, between the Home Owner and the second mortgagee? A. Yes. 313

Q. There was? A. Yes, I remember that.

Q. Do you remember how much there was? A. No, I don't remember exactly how much there was.

Q. Was there some discussion about it at that time? A. Yes.

Q. Now, then, about how many Home Loans did you close, Mr. Meranus? A. Offhand I would say about 75 or 80.

Q. Did you negotiate with the first and second mortgagees or the other lienors on the property to accept a lesser sum than that which was actually due, so that Home Loans could close? A. Oh, sure. 314

Q. Were those your duties? A. Yes, of course.

Q. Did you negotiate in this case? A. Negotiate in every case.

Q. Did you in this case? A. Yes, of course.

Q. Did you negotiate with the first mortgagee? A. Yes, that is my duty, that is my job.

Q. Do you remember when you began negotiating with the first mortgagee in the case, Mr. Meranus? A. That I don't know; that is hard to say. 315

Q. But you did have negotiations? A. Yes.

Q. As a result of your negotiations was any saving effected?

Mr. Serri: I object to that, Judge. How can he tell? He may write one letter——

The Court: Yes, I am going to exclude that. The amount that he saved, I am going to exclude.

316 Q. Then let us bring it out this way: What was the claim of the first mortgagee? A. According to the consent in the file, they had $9,000 plus accrued interest. Now, the exact amount, dollars and cents, it is hard for me to say.

Q. Do you notice that the total amount is $9500 and something? A. Oh, excuse me. There is another consent here. There is a number of them here. They have—the last one is July 20th for $9,558.50 for balance of principal and unpaid interest.

Q. After your negotiations with this first mort-
317 gagee, how much did the first mortgagee actually take? A. They got $9,305.78.

Cross examination by Mr. Serri:

Q. When you say you negotiated with the first mortgagee, what did you do? A. Well, you want my practice?

Q. No, no, in this particular case, what did you do? How many letters, for example, did you send to the first mortgagee? A. Oh, that is hard to say because, you see, I negotiate over the telephone and I call them up, and they ask me—they
318 call me and they ask me how much does the Government approve, and I tell them so much and so much, and they tell me their claim is so much, and then, of course, we try to negotiate, to bring it within the approved loan of the Government.

Q. Don't you know that Miss Kay was negotiating, had been constantly for about a month's time between herself and the attorneys for the first mortgagee? A. Well, I remember Miss Kay being in this case, I do remember that, and I do

remember her coming to my office and telling me 319
that she was hired by the Sciortines to help them transact this loan. Now, she must have negotiated. That I don't know; she told me she did and I suppose she did.

Q. Didn't the attorneys for the first mortgagee tell you they had been negotiating with Miss Kay, that they had sent her at least half a dozen letters? A. That is hard to remember.

Q. You offhand cannot tell whether you wrote one letter— A. No.

Q. (Continuing.) —yourself, or made one telephone call? A. Just a minute. If I could look in 320
the file.

Q. Yes, look at your file. A. Well, no, offhand I couldn't tell you that.

Q. It may have been one letter, it may have been one telephone call on your part? A. Oh, no, it was more than that.

Q. But you don't know? A. No, but it was more than that; I know that.

Mr. Serri: That is all.

(Witness excused.)

SALVATORE ABRIMONTE, resumed the stand. 321

Direct examination by Mr. Scileppi:

(Testimony taken through Interpreter Pasquale.)

Q. Do you live at 31 Tompkins Place? A. Yes.

Q. And you own the house, don't you? A. Yes.

Q. Did you make application for a Home Loan? A. Yes.

322 Q. Did you make it yourself or did the defendant make it for you? A. That lady wrote it up. (Indicating.)

Q. Indicating the defendant Kay? A. Yes.

Q. Did you know this lady before she made out the Home Loan application for you? A. No.

Q. How did you come to meet her? A. Through another person.

Q. Did you get a Home Loan? A. Yes.

Q. At the time that the application for the Home Loan was made did the defendant ask you for any money? A. No.

323 Q. Did you make the Home Loan application for your wife? A. My wife did it.

Q. She signed the application? A. Yes.

Q. And did you or did your wife speak to this defendant? A. I had nothing to do with my house. My wife did everything.

Mr. Scileppi: May I withdraw this witness at this time?

(Witness excused.)

Mr. Scileppi: Mrs. Abrimonte.

The Court: Are you through with this witness or withdrawing him?

324 Mr. Scileppi: I am withdrawing him.

ROSALIE ABRIMONTE, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

The Court: Can you talk English?

The Witness: No, not a bit.

(Testimony taken through Interpreter Pasquale.) 325

Q. Mrs. Abrimonte, I show you this application and ask you if you signed it? A. Yes.

Q. Do you know who made it out? A. Miss Kay.

Q. At the time that this application was made out was anything said about paying Miss Kay anything? A. After the contract was all over, $30.

Q. $30 what? Who was to get the $30? A. To her, because she did everything.

Q. She was to get you the Home Loan? A. Yes. 326

Q. And you did not get the Home Loan, though, did you? A. No.

(Application marked Government's Exhibit 5 in evidence.)

Cross examination by Mr. Serri:

Q. You did not pay $30 to Miss Kay? A. No.

Q. And were you having difficulty with your first mortgagee at that time? A. No, she gave me $500 for the first mortgagee. She paid it. 327

Q. Who paid it? Who paid what? I did not ask you anything about any payments. A. I had a $5,000 first mortgage and she came to me because I called her up to reduce the mortgage, reduce it $500. Miss Kay paid the $500 and I paid $25 to renew the contract.

Q. When was that? A. August 1, 1931.

Mr. Serri: I move to strike all that out.

328 That has nothing to do with it. The law was passed in June, 1934.

The Court: It doesn't hurt.

Q. In other words, Miss Kay had a second mortgage on your property, is that it, in 1934 or 1935? A. Yes, $500.

Q. And in 1933, when you filed your application for Home Loan you were having difficulty paying the first mortgagee, is that right? A. No,—yes, the first mortgagee wanted the mortgage.

Q. And you asked Miss Kay to go and see the
329 first mortgagee to have him stop foreclosure, and so forth, didn't you? A. No.

Q. Didn't you ask Miss Kay to go and see the first mortgagee for you? A. No, Miss Kay says, "If you want a Home Loan, I can save all your difficulties."

Q. Didn't you ask Miss Kay to go to the first mortgagee and have him stop, or wait for his money? A. No.

Q. Were you paying your interest regularly on your first mortgage? A. Yes.

Q. You were not in arrears on your first mortgage? A. Taxes.

330 Q. And not the interest on the first mortgage? A. No.

Q. Don't you know that Miss Kay, at your request, went to the first mortgagee at least half a dozen times?

Mr. Scileppi: I object to that, if your Honor please.

The Court: In that form.

Mr. Scileppi: I don't object to the ques-

tion, don't you know she went half a dozen times; but "at your request," I object to that. 331

Mr. Serri: Yes, at your request.

The Court: I will rule the question out in that form. She said no, but I will let you ask the question again.

Q. Didn't you ask Miss Kay to go to the first mortgagee for you in 1933? A. In 1933 the first mortgagee wanted all the taxes paid in cash, and I did not have them.

Q. What did you say to Miss Kay, "Go and see the first mortgagee for me"? A. No,—— 332

Q. What were you going to say, Madam? Complete it. A. In 1933 the first mortgagee asked Miss Kay to arrange to have the taxes paid because they were going to foreclose.

Q. Yes. Didn't you then ask Miss Kay to go to the first mortgagee and tell them to stop and wait? A. No.

Mr. Serri: That is all.

Re-direct examination by Mr. Scilleppi:

333

Mr. Serri: Conceded written by the defendant for Mrs. Abrimonte.

Q. May I please ask you to look at that letter and tell me whether or not you ever wrote it?

Mr. Serri: We concede she did not write it, Judge.

A. No.

334 Q. Did you ever see that letter before? A. No.

The Court: Wait a minute. You offer that in evidence so we will have each one identified that she did not——

Mr. Scileppi: She won't identify anything.

Mr. Serri: The three were written by the defendant, Judge.

The Court: He wants to show this lady did not see them.

Mr. Serri: Conceded she did not.

The Court: It is conceded this lady did
335 not see anyone of these three letters which you are now offering as exhibits.

Mr. Scileppi: All right.

The Court: And it is further conceded that the defendant——

Mr. Serri: Wrote them and signed her name.

Mr. Scilleppi: May I read these letters?

(Marked Government's Exhibits 6, 7 and 8 respectively in evidence.)

The Court: Now read them. They are short, aren't they?

336 (Mr. Scileppi reads Government's Exhibit 6 to the jury.)

Mr. Scileppi: Government's Exhibit 7, do you concede that that is the handwriting of Miss Kay?

Mr. Serri: Yes, right, written by the defendant.

Mr. Scileppi: It is conceded that Government's Exhibit 6 is in the defendant's handwriting.

(Mr. Scileppi reads Government's Exhibit 7 to the jury.) 337

Mr. Scileppi: Government's Exhibit 8 is more or less of the same nature, but typewritten on a machine, and also again signed Rosalie Abrimonte, in the sum kind of English, chopped-up English.

Would you gentlemen care to see it or have me read it to you?

The Court: They may see it in the jury room.

What I want to do is to get the contents of the evidence as it goes in at the time it goes in. 338

Mr. Scileppi: That is all.

(Witness excused.)

The Court: We will take a recess until ten-thirty tomorrow morning. Gentlemen, I do not have to repeat my instructions again.

(Recess to May 14, 1936, at 10:30 A. M.)

Brooklyn, N. Y., May 14, 1936.

Met pursuant to recess at 10:30 A. M.; present as before. 339

EDNA GREGOR, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mrs. Cohen, where do you reside now? A. At 832 Ocean Avenue.

340 Q. Your real name is Edna Gregor Cohen, is that correct? A. That is right.

Q. But in certain documents you are known as Edna Gregor, are you not? A. That is right.

Q. There are certain mortgages and certain papers that have been signed under the name of Edna Gregor? A. That is right, yes, sir.

Q. Do you know Gertrude Kay? A. I do.

Q. Do you know Gertrude Klein? A. Yes, sir.

Q. They are the same persons, are they? A. Yes.

Q. And G. K. is Gertrude Kay? A. Those are her initials.

341 Q. And G. Klein is Gertrude Klein? A. That is right.

Q. Who operates the Kay Operating Company? A. Miss Kay does.

Q. Is that incorporated or is it a trade name, the Kay Operating Company? A. I really don't know that.

Q. Do you own any mortgages? A. No, sir.

Q. Did you ever own any mortgages? A. No, sir.

Q. There are mortgages, however, in the name of Edna Gregor. Do you know who owns them?

342 A. Yes, I do.

Q. Who owns them? A. Miss Kay.

Q. Do you know Laura Terrone? A. Yes, sir, I do.

Q. Was there a second mortgage on the premises owned by Mrs. Laura Terrone under the name of Edna Gregor? A. Yes, sir, there was.

Q. You know about that? A. Yes.

Q. You were not the owner of that mortgage? A. No.

Q. Did you ever execute any papers in connection with a mortgagee's consent in order to obtain a Home Loan from the Government? 343

Mr. Serri: Conceded that she did not. We did; that means Miss Kay.

A. Some time ago—may I speak?

Q. No, just answer my questions, Miss Kay,—Mrs. Cohen. A. All right.

Mr. Scileppi: In other words, you will concede that this exhibit——

Mr. Serri: Is executed by the defendant, Miss Kay, correct. 344

Mr. Scileppi: And filed by her with the Home Loan?

Mr. Serri: Yes.

Mr. Scileppi: Then may I have it marked?

(Marked Government's Exhibit 9 in evidence.)

The Court: Read it to the jury. Tell them what it is. Just summarize it. You don't have to read it.

Mr. Scileppi: Gentlemen of the Jury, Exhibit 9, Government's Exhibit, is what is known as a mortgagee's consent to take bonds, Home Owners' Loan bonds, and it is sent out by the Home Owners' Loan to the mortgagee. It is made in the sum of $590 on the 4th of September, 1934, and it states that the total amount due on the mortgage was $590. Signed Edna Gregor, 1904 Foster Avenue, Brooklyn. 345

346 Q. 1904 Foster Avenue, Brooklyn, is your sister's address, is it not? A. I did live there.

Q. At that time? A. Not at that time, no.

Q. Did you know that that mortgagee's consent, that is, Government's Exhibit 9, was being filed with the Home Owners' Loan Corporation? A. Yes, I did know that.

Q. But you had nothing to do with the figures? A. Well, that is partly my fault. I will explain that, if you will permit me.

Q. Did you have anything to do with the figures, yes or no? A. Then I will have to say no.

347 Q. You had nothing to do with the figures, is that correct, or isn't that correct? A. I could explain that, if you will permit me to.

Q. Did you have anything to do with the figures? A. My sister asked me about figures at one time.

Q. Your answer is no, is that correct? A. I will say yes, I did.

Mr. Serri: I object; the witness——

The Court: She said no the first time.

The Witness: Your Honor, may——

The Court: No, please, you may answer
348 questions. We will get nowheres. We will never get anywhere unless you answer questions.

The Witness: Well, I am partly responsible.

The Court: The other attorney will have a chance to ask you.

Q. Did you give your sister a blanket power of attorney to sign your name to anything? A. Yes, sir, I did.

Q. You did that quite often? A. Yes. 349

Q. On several occasions? A. I gave it to her several years ago.

Q. Then you repeated giving it to her, did you not? A. Yes.

Q. You never advanced any of the money on any of these mortgages or any part of it—I withdraw that. The money that was advanced on these mortgages, was any part of it yours?

Mr. Serri: That is conceded, Miss Kay's.

Q. Now, did you sign any consents with respect to any Home Loan applications? A. Yes, I did. 350

Q. What properties, do you know? A. I don't recall, no, I don't.

Q. How long have you known Mrs. Terrone? A. About, I think, since 1930.

Q. Do you remember when you gave that power of attorney to your sister? A. Yes, I gave my sister a power of attorney in about 1927, and many times since.

Q. May I please ask you to look at this signature and tell me whether it is yours? A. That is my signature.

Q. May I please ask you to look at this signature and tell me whether this is yours? A. No, that is not my signature. 351

The Court: Better have them marked for identification.

Mr. Scileppi: Yes, I will have them marked in time.

The Court: You had better do it now so you will know which she said was signed by her.

352 Mr. Scileppi: That is Exhibit 10 for identification.

(Marked Government's Exhibit 10 for Identification.)

The Court: That is the one she admits was signed by her?

Mr. Scileppi: Yes.

The Court: There is another one there too.

Q. May I ask you to please look at this signature and inform me whether or not that is your signa-
353 ture? A. That is my signature, yes, sir.

Mr. Scileppi: May I have this marked for identification Government's Exhibit 11?

(Marked Government's Exhibit 11 for Identification.)

Cross examination by Mr. Serri:

Q. Miss Gregor, during 1933 and 1934 did Mrs. Terrone make payments directly to you on the second mortgage? A. Mrs. Terrone sent me no
354 payments on her second mortgage since 1932. She didn't have the money, she told me. I would just let it run. Occasionally she would bring interest when she had it.

Q. Before 1933, then, would she make the payments frequently directly to you? A. She always made them to me.

Q. And would you give receipts? A. Yes, sir, I always gave Mrs. Terrone a receipt.

Q. What was the—— 355

Mr. Serri: May I have the date of that consent, Mr. Scileppi, signed by the defendant in this case?

Mr. Scileppi: September 1, 1934.

Q. In September, 1934, had you told Miss Kay the exact amount of the balance that was due on that mortgage? A. I was quite ill.

Mr. Scileppi: I object to that, if your Honor please.

Mr. Serri: Very important, it seems to me. 356

The Court: That is the mortgage——

Mr. Serri: That was introduced, the consent signed by the defendant, which states $590. That is an incorrect amount. We admit it is an incorrect amount. I am asking her, whether she knows, what was the correct amount, because she was keeping——

The Court: Objection sustained.

Mr. Serri: Exception.

Q. For a period there in 1934 were you away from home and sick, in the hospital? A. Yes, sir, 357
I was.

Q. During that time were you able to communicate to your sister the correct amount due on that mortgage? A. No, sir.

Mr. Scileppi: I object to that, if your Honor please.

The Court: Sustained.

Mr. Serri: Exception.

358 Re-direct examination by Mr. Scileppi:

Q. You were only a dummy for your sister? A. If you wish to call it that, yes.

(Witness excused.)

LAURA TERRONE, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

359 Direct examination by Mr. Scileppi:

Q. Where do you live, Madam? A. 229 Bergen Street.

Q. Do you own the house? A. Dominick, my husband, and me.

Q. Both of you are on the deed? A. Yes.

Q. How long have you owned that house? A. About ten or eleven years, about that time.

Q. What kind of house is it? A. Brick house.

Q. How many families? A. It is four stories, three-family house.

Q. You have children? A. Yes, sir.

360 Q. How many children have you? A. I have got five.

Q. You know this defendant, Miss Kay, do you not? A. Yes, I know Miss Kay.

Q. How long have you known her? A. I know since she loaned this mortgage.

Q. How long is that? A. But I cannot tell. About seven or eight years. About that time. I don't remember very good.

Q. She loaned you the money, didn't she? A. No, no; Miss Edna Gregor loaned me the money. She was the real estate girl. 361

Q. Who was the real estate girl? A. She was.

Q. When you went to Edna Gregor— A. No.

Q. (Continuing)—she would send Miss Kay over to see you? A. Oh, yes, she sent Miss Kay to see me about the Home Loan.

Q. Who gave you the money, Mrs. Terrone? A. Miss Kay.

Q. Miss Kay gave you the money? A. Yes, under Miss Gregor's name. She says the home is in Miss Edna Gregor and I am only the real estate. 362

Q. She was only the broker? A. Yes, the broker.

Q. Did you have occasion to go and see Miss Gregor? A. I go and see Miss Gregor all the time.

Q. What address did you go to to find Miss Gregor, what house? A. Before she lived five something—well, she moved from that house. Now she is 832 Ocean Avenue. I went last month. I got receipt now.

Q. 832 Ocean Avenue? A. Yes, she lives now.

Q. Did you ever go to 1904 Foster Avenue? 363 A. Yes, my husband at that time was mind the house, and I used to go over there to pay.

Q. Did this defendant, Miss Kay, did she ever come to you and speak to you about getting a Home Loan? A. Yes. She says Miss Gregor sent for me, she is coming to see me, and says for the Home Loan. She could do it, she says; I got all right for the other people, I can do

364 it for you, and she showed me on the table a lot of records of the other people.

Q. Was there anything said about money? A. She says my work is $50, talk it over with the children, and I come back in a few days.

The Court: Who said that?

The Witness: Miss Kay.

Q. Miss Kay said that? A. Yes, sir.

Q. Had you filed your Home Loan application at that time? A. Well, she came after a couple of days. She says——

365 Q. No, had you filed your Home Loan application? A. I don't file the papers that day, no.

Q. Then what happened? A. Well, she came after a couple of days and she says, Mrs. Terrone, I cannot do it for $50 on account of your husband is sick in the hospital. You need a lawyer and your lawyer cost $175. I says, That much? She says, Yes, that is what they cost. She says, This address the lawyer lives. She gave me a ticket. On one side is got ticket over there, and Joe send you to 44 Court Street, to Lowe, a lawyer named Mr. Lowe, and she was over there.

366 The Court: Did you go see a lawyer?

The Witness: Yes, she says, Come see me between four to five, I am up there. I did go to see the lawyer, and she was waiting for me like anything.

Q. Mrs. Terrone, you say your husband was sick at that time? A. Yes, my husband——

Q. Where was your husband? A. He was first

in Kings County, and then transferred to Brooklyn, and then to Creedmore State Hospital at that time. 367

Q. At that time he was in the Creedmore State Hospital? A. Creedmore State Hospital.

Q. He is suffering from a mental illness? A. Mental sick. Now he is on parole, and he is up, and I don't want to bring him because——

Q. I show you this paper and ask you if you ever seen it before? A. I never see this paper before.

Q. Look at it and see. A. Let me see. This is my sign, yes. 368

Q. Is that the application you signed? A. Yes, she don't fill this paper in my home. She started and she says I fill—she just make me sign this sign, but she finish filling in the office. She says, I have no time here, because the children were home.

Mr. Scileppi: I offer it in evidence.

Mr. Serri: No objection.

(Marked Government's Exhibit 12 in evidence.)

369

Q. Mrs. Terrone, you made several payments either on account of interest or on account of the second mortgage? A. I did.

Q. Which this defendant held in the name of Edna Gregor, did you not? A. I know Miss Gregor, yes.

Q. May I show you this paper and ask you from whom you received that? A. What is this? This is long ago. This has nothing to do.

370 Q. Wait a minute; you received that? A. This is long ago. I got my receipt home.

The Court: No, did you get that paper?

Q. That is a receipt for interest? A. Oh, yes, Miss Gregor sign that.

Mr. Scileppi: I offer it in evidence.

The Witness: That is Miss Gregor's signing.

Mr. Scileppi: I offer this in evidence, this Government's Exhibit 10 for Identification.

371 Mr. Serri: No objection.

(Government's Exhibit 10 for Identification now marked in evidence.)

Q. Is this another receipt that Edna Gregor signed for you? A. That is Miss Gregor's signing.

Q. Do you remember when you made that payment? Look at it and read it. Do you read English, or shall I call an interpreter? A. No, I cannot read English.

372 Mr. Scileppi: Have we an interpreter here?

A. (Continuing.) I cannot read or write. I talk a little bit.

The Court: Why don't you offer it in evidence and then you can read it, Mr. Scileppi?

Mr. Scileppi: All right, I will offer it in 373
evidence.

Mr. Serri: No objection.

(Government's Exhibit 11 for Identification now marked in evidence.)

Mr. Scileppi: Government's Exhibit 10 is a sheet of paper, apparently a receipt. At the top is Edna Gregor, 832 Ocean Avenue, Brooklyn, New York. Mortgage notice. Name, Laura Terrone. Address, 228 Bergen Street. On February 18, 1934, received $12.88, covering interest up to February 11, 1934, and $15 374
towards reduction of principal. Total, $278.08, or whatever that is—total of $27.88. Balance of principal on February 18, 1934, is $285.

The Witness: $285, yes.

The Court: What is the date of that?

Mr. Scileppi: There is no date on it. There is no date on this paper. In figures, and then written out, $285, and signed by Edna Gregor.

Q. Now, then, on the 18th of February, 1934, do you remember making these payments of $12.88 and $15? A. Yes, to Miss Gregor.

Q. At that time do you remember that the bal- 375
ance due was $285? A. $285, yes.

Mr. Scileppi: Government's Exhibit 11 in evidence is a similar notice. Edna Gregor. 755 Ocean Avenue. Received from Laura Terrone of 228 Bergen Street, Brooklyn, interest amounting to $14.65 for ten months, covering period from February 11, 1934, to December 11, 1934. Edna Gregor.

376 Mr. Serri: What are those dates?

Mr. Scileppi: February 11, 1934, to December 11, 1934.

Q. After the 18th of February, 1934, did Edna Gregor or Gertrude Klein give you any additional money on this mortgage? A. No, no. My husband——

Mr. Serri: That is conceded; we did not.

Q. There was no additional sum? A. No, no money. Nobody lent me any money. I don't
377 know Miss Kay since then.

Q. Do you remember when this application was filled out? A. It was in May.

Q. Did you read the application? A. No, sir. Well, she read for me and she write for me everything, and so on. I cannot read and I cannot write.

Q. Do you know how much Miss Kay had put down as the amount which was owing to her on the second mortgage? A. She says, Mrs. Terrone, between the lawyer, $275—$175—and they put $500 on this case—on this paper, to cover the bill,
378 to cover the expense, and I thought it was the one hard tax to pay on this bill, on this Government paper, when she obtained it, that is all.

Q. What did you say about the $175? Was that included in the amount of the mortgage? A. No, no. To the lawyer, she says.

Q. That was to go to lawyers? A. Oh, yes, she says, you need a lawyer.

Q. The mortgage, you say, was $285? A. Yes, sir, still there.

Q. That is what you actually owed? A. Yes; still, this paper I got here. 379

Q. And this $175 on top of that for the lawyer, that is $460. Can you tell us, or can you account for the sum of $590 being in the mortgagee's consent to take bonds, Government's Exhibit 9? Just look at that, please. A. Explain good to me, because I don't understand.

Q. Do you see the sum of $590 mentioned in the mortgagee's consent? A. No, I don't see this paper at all.

Q. Look at it now. A. No, I don't see this paper at all.

380

Q. Look at it. A. It is $590.

Q. That is the second mortgagee's consent to take bonds? A. Yes—first mortgagee was this paper.

Q. The second mortgagee, Miss Kay's mortgage? A. Miss Kay? No Miss Kay's mortgage.

Q. Miss Gregor's mortgage? A. Miss Gregor's mortgage; on this Miss Gregor mortgage.

Q. Can you tell us how that $590 got on the mortgagee's consent? A. I don't know anything. $285 is my bill on the Miss Gregor mortgage, second mortgage. The rest is for the lawyer, she says; she write the letter and she do everything. 381
She got about $1000, and I don't know what she did. I don't know what she did.

Q. May I please ask you to look at that letter and tell me whether or not you wrote it? A. I no see this letter.

Mr. Serri: Conceded to be written by Miss Kay.

A. I cannot write.

382 Mr. Serri: Conceded.

The Court: You did not write that letter?

The Witness: No.

The Court: It is conceded by the defendant that the defendant wrote it.

Mr. Scileppi: May I offer it in evidence? It is dated August 18, 1934.

(Marked Government's Exhibit 13 in evidence.)

Mr. Scileppi: This exhibit, Gentlemen, reads as follows:

"August 18, 1934.

383 Home Owners' Loan.

Please will you rush my loan through? The first mortgagee is making trouble for me on account of my tax and interest arrears. I don't blame them, and I have been doing what I could to catch up, but it is too much behind. I ask please that you do what you can to get my loan closed this week, please.

Thank you for assisting me.

Very truly yours,

384 LAURA TERRONE,
228 Bergen Street, Brooklyn, N. Y."

Is this conceded? (Indicating a paper.)

Mr. Serri: Oh, yes, that is conceded.

Q. Did you ever see this letter?

Mr. Serri: We will concede she did not.

The Court: She may have. You don't know that, Mr. Serri.

Mr. Serri: Simply to save time. 385

The Court: I know, but we want to get the facts.

The Witness: I received the letter. She said, Any letter you receive, give it to me.

The Court: Did you ever see that letter before just now

The Witness: No, I don't see.

Q. Did you know anything about that letter? A. No, I didn't see no letter that comes in to me.

Mr. Scileppi: In view of the defendant's concession, the Government offers it in evidence. 386

(Marked Government's Exhibit 14 in evidence.)

(Mr. Scileppi reads Government's Exhibit 14 to the jury.)

Q. Did the mortgagees worry you to death? A. No, Mr. Prince never worried me. Mr. Prince is still on Montague Street. He never worried me.

Q. Did Miss Gregor worry you to death? A. No, she never come because I paid it all the time; what I could do, I do. 387

Cross examination by Mr. Serri:

Q. But you were in arrears on your payment on the interest on the mortgage, weren't you? A. What is that?

Q. You were in arrears in 1934, for example,

388 you were in arrears in payment of your interest on the second and first mortgages? A. Well, yes, a little bit back.

Q. I mean, you had been back— A. Interest.

Q. On both the interest? A. Yes.

Q. And you had also been back on the taxes? A. Yes, a little bit on the first mortgage.

Q. And a little bit back on the second mortgage? A. Yes.

Q. And the taxes too? A. Yes, on the taxes too. That is why I wanted this.

Q. By the way, didn't the Home Owners' Loan
389 Corporation tell you that you needed a lawyer to straighten out about the matter of your husband? A. Nobody tell me. I never see Home Owners' Loan Corporation until the last time they call me with the paper, with my deed.

Q. No agent told you that you needed a lawyer to straighten that out? A. No. The agent come to my home and they go back, that is all.

Q. What was the original amount of the second mortgage that Miss Gregor? A. $285.

Q. You see, you are so ready to answer, you don't listen to the question. What was the original amount of the second mortgage? A. What
390 do you mean? Explain better.

Mr. Scileppi: I think this witness has difficulty understanding.

Mr. Serri: That may be true, but it simply shows how she wants to get out the $285.

The Witness: Nothing of the kind, because that is true, God.

Q. Listen——

The Court: How much was the mortgage when she first gave you money? 391

The Witness: It was $1000. She says——

Q. All right, that is all, it was $1,000.

The Court: But "originally" is hard for her.

Mr. Serri: There I am at fault. I think the word was difficult for her.

Q. So that at first the mortgage of Miss Gregor was $1,000? A. Yes, $1,000.

Q. So that here in your application the original amount is $650. That is incorrect, isn't it? 392
A. What do you mean, incorrect? I don't know what you mean.

Q. Oh, well.

Mr. Scileppi: Ask her if it is right or wrong.

Q. $650, is that right for the mortgage at first, is it? Your second mortgage, at first, was $1,000? A. Yes, then when she gave it——

Q. Yes, long ago, $1,000. So that $650 is not correct? A. No—— 393

Q. For the mortgage long ago, originally, is it? A. I don't know what you mean.

The Court: That is apparent.

Mr. Serri: I want to show that the whole thing is a rough estimate, a mistake made as to the original amount, and so forth.

The Court: By whom?

394 Mr. Serri: The defendant, who drew up this, made a rough estimate of what was the original mortgage; not $1,000, but $650.

Q. Likewise at that time did you know or did you tell Miss Kay how much was due you on this mortgage? A. She don't; she says to me to sign for $500, and the balance of Miss Gregor was $285, and that is all it was.

Q. Mrs. Terrone, if you will just take it easy; I am not fighting with you. A. I don't fight anybody. I am not trying to prove you are wrong. Then when it says originally the second mort-
395 gage $650, that is wrong. A. She got about a thousand. She got it, I know.

Q. Please, I say, originally it was not right? A. No, it wasn't right. $285 was.

The Court: You have the fact that she admitted it was wrong.

Q. And the present amount she put down $450. A. I don't know what she did.

Q. No, wait, please. A. I hear.

Q. She was simply guessing. A. My God, I
396 don't run away.

Q. Now, Mrs. Terrone, please just answer. A. Yes, sure.

Q. Didn't she say to you, "I don't know the exact amount that is due now", and put down $650? A. I don't know what she did. She says—

The Court: Did she say that?

Q. Didn't she tell you she was putting down a

rough figure? A. She said she was putting down 397
$500.

Q. She put down $450. A. I cannot write, gentleman.

Q. Can't you see numbers? A. But she didn't fill the paper in my home.

Q. Didn't she tell you? A. She can tell me anything she wants.

Q. Didn't she tell you, "I am putting down a rough figure of $450 because I don't know the exact amount"? A. She says $500; it is to cover the lawyer's fees; you never ask about these lawyer's fees, what it was. 398

Q. Just a moment, Mrs. Terrone. Again I want to caution you, answer the question. Did I ask you anything about a lawyer then? A. No.

Q. All right; I am simply asking about the $450, that she told you, I will put a rough figure in, and she put $450 here. A. I don't know what she did.

Mr. Scileppi: I object to that, trying to put words in the mouth of the witness.

The Court: Objection sustained.

Q. As to the taxes that were due, did you know 399
at that time the amount of taxes— A. There was 1933 tax to pay.

Q. Only 1933? A. Yes.

Q. One year? A. One year.

Q. When she put down two years, 1933 and 1934? A. 1933 and 1934 years, yes.

Q. How much did you tell her the tax amounted to? A. $200.

Q. She put down $300. You were guessing, in

400 other words, as to about what was due on this property? A. I didn't know what she did.

Q. Did you know exactly the amount of interest on the first mortgage that you were in arrears? A. Oh, yes, yes.

Q. How much were you in arrears on the interest on the first mortgage? A. I was one turn, that is all.

Q. How much? A. One turn, one payment, to Mr. Prince.

Q. Did you tell her how much interest there was? A. One hundred and some.

401 Q. And she put down $250? A. So she make everything more.

Q. In other words, neither of you knew exactly, I mean, you did not know exactly how much interest you owed, did you? A. No.

Q. You were guessing roughly? A. Yes.

Q. It might have been $150, $200, and it might have been $250? A. Yes.

Q. Likewise on the taxes, it might have been $200 and it might have been $250? A. Yes.

Re-direct examination by Mr. Scileppi:

Q. You did not guess about the amount of in-
402 terest that was due on your first mortgage? A. I did not guess anything.

Q. You knew how much was due? A. Yes.

Q. You owed one payment? A. One payment.

Q. How much was the amount of interest payment that you made? A. To Mr. Prince?

Q. Yes. A. $143 and a few cents.

Q. And that is the interest payment that you made on each payment, isn't it? A. Yes, every six months interest payment.

Q. You were not guessing; you knew that was due? A. Well, those payments, of course, we had to pay. 403

Q. You knew that? A. Yes, one hundred——

Q. You are not guessing? A. No, that was due.

Q. You know how much you owed her on the second mortgage? A. Yes, $285.

Q. You know how much the amount of taxes was? A. Yes, $200.

Q. You were not guessing on anything, were you? A. No.

Q. Who suggested putting more money in? A. She put in everything she wants, Gentlemen of the Jury, that is true. 404

Mr. Serri: Now, I object to that and move to strike that out.

The Court: Yes, strike it out, "Gentlemen of the Jury, that is true", strike that out.

(Witness excused.)

JOHN SULFARO, called as a witness on behalf of the United States, having been duly sworn, testified as follows: 405

Direct examination by Mr. Scileppi:

Q. Mr. Sulfaro, do you own premises 2116 Bath Avenue, Brooklyn? A. Yes.

Q. Is that where you live? A. Yes.

Q. Did you file an application— A. Yes.

Q. (Continuing.)—with the Home Owners' Loan Corporation? A. Yes.

406 Q. Did you file it or did somebody else file it for you? A. No, somebody filed it, make it.

Q. Do you understand me, or do you feel you need an interpreter? A. All right, give me an interpreter, that is better.

The Court: I think we will get along better.

(The witness continued testifying through Interpreter Pasquale.)

The Court: If you are going to talk through the interpreter, do not speak English, speak Italian.

407

Q. Did you sign this application? A. My wife did.

Q. Is your wife here? A. Yes.

Q. Were you present when your wife signed the application? A. Yes.

Q. Did you see her sign it? A. Yes.

Q. Who made out the application?

Mr. Serri: A little louder, so I may hear.

The Court: Yes, a little louder, even in Italian. Mr. Serri wants to hear it both ways.

408

A. Somebody that brings coffee to my store.

Mr. Scileppi: I offer it in evidence.

Mr. Serri: No objection.

(Marked Government's Exhibit 15 in evidence.)

Q. After you filed that Home Loan, did this defendant approach you? A. Yes.

Q. Do you know who holds the first mortgage on your property? A. I know him. He isn't here. I know his name. His name is Piscoppi. He lives in California. 409

Q. Do you know a Mr. Bauersfeld? A. No.

Q. You used to receive letters notifying you that the interest payment was due, did you not? A. Yes.

Q. May I please ask you to look at this letter and inform me whether or not that is one of the letters that you received with respect to one of the interest payment notices? A. No.

Q. Do you remember when Miss Kay came to your home? A. No. 410

Q. Do you remember Miss Kay coming to your home? A. Yes.

Q. May I ask you to please read this letter?

Mr. Scileppi: Will you please read it to him in Italian, Mr. Pasquale?

(The Interpreter complies.)

Q. Do you remember receiving that letter? A. Yes.

Q. When you received these letters did somebody read them to you? A. When I received those letters one of my children who goes to public school, did. 411

Q. Do you remember then receiving the letter? A. Yes.

Q. That was a demand to pay interest, wasn't it? A. Yes.

Q. What did you do with that letter when you received it or sometime after? A. I called Miss Kay on the telephone because she was supposed

412 to help me for the Home Loan. She came to me and I gave her the letter and $25 at half past nine at night. Miss Kay for the $25 was to bring me a receipt. This receipt she did not bring for about three weeks.

Q. A receipt for what and from whom? A. The lawyer of the second mortgage, because the $25 she was to bring to the second mortgagee.

Mr. Scileppi: Now I offer this letter in evidence, if your Honor pleases.

Mr. Serri: No objection.

413 (Marked Government's Exhibit 16 in evidence.)

Mr. Scileppi: Do you object to this writing on the bottom?

Mr. Serri: No, it is conceded.

(Mr. Scileppi reads Exhibit 16 to the jury.)

Q. Did your wife write on here at the bottom—

Mr. Serri: That is conceded, that Miss Kay wrote that.

414

Q. Then never mind that. At the time you gave the $25 to Miss Kay did you get a receipt? A. She made a receipt for me on the envelope of the same letter that is in evidence now.

Q. I show you this and ask you if that is a fair representation of the envelope and of the receipt which Miss Kay made for you on the envelope that you had received from Bauersfeld?

The Court: Does that look like a picture of the envelope? 415

Mr. Serri: If your Honor please, I have the original, so that if that compares with our original, I will concede it immediately.

Mr. Scileppi: All right, here.

The Court: He would not understand photostatic copy, but he might understand picture.

Mr. Serri: That is correct.

Mr. Scileppi: May I offer it in evidence?

Mr. Serri: You may.

Mr. Scileppi: All right. 416

(Marked Government's Exhibit 17 in evidence.)

The Court: Better read that.

(Mr. Scileppi reads Exhibit 17 to the jury.)

Q. Now, then, after you gave this $25 to Miss Kay, when did you again see Miss Kay? A. After three weeks, when I received the letter from the Home Loan, a few days later, Miss Kay came to me and gave me back the $25, and I also then found out that she had nothing to do with the Home Loan. 417

Mr. Serri: I object to that seriously because——

Mr. Scileppi: I object too.

Mr. Serri: Because that is not a correct translation.

Mr. Scileppi: We will all agree that the answer was so long it became almost impossible to translate it.

The Interpreter: I think that is correct.

418 Q. Supposing we start all over again. Tell me— A. Ask the question again.

Q. Tell me when next you saw Miss Kay after having given her the $25. A. The day she gave me back my $25.

Q. Before that had you received any letters from the Home Owners' Loan Corporation? A. Yes, sir.

Q. What did you do? A. They called me here.

Q. And you spoke to somebody; do you know who? A. Yes.

Q. Do you know with whom? A. No name. I
419 don't know the name.

Q. Do you see anybody in this court that you spoke to? A. (No answer.)

Mr. Scileppi: The tall blond, he says, this man here.

Will you stand?

Q. Is this the man? A. No. Once I spoke to him, but I spoke to somebody else who isn't here now.

Q. That is right. Now, then, when you came down to the Home Loan, what did you do with
420 that envelope? A. I brought it here.

Q. And you left it here for a certain length of time, did you not? A. Yes.

Q. And then you received it back again? A. Yes, registered by mail.

Q. On the day that you received it back, that is to say, that you got the $25 back from Miss Kay, is that correct?

Mr. Serri: I object as leading. That is

putting right into his mouth the date, and so forth. 421

Mr. Scileppi: He says that.

Mr. Serri: No.

Mr. Scileppi: Then we won't have any dispute.

The Court: I will let him ask it in that form.

Mr. Serri: Exception.

The Witness: That same night——

Q. Now, give us the rest of your answer. The letter was registered—— 422

The Court (to the interpreter): You want to give all he says. Don't you make up your mind which to give. We will strike it out, if it is not right.

A. I want to know why Miss Kay kept that money for three weeks. She could have left me alone to work in my business.

The Court: Strike it out.

Q. Did you say that to Miss Kay? A. No. 423

Q. No, no. When you returned the envelope—pardon me, I should have received the answer first. When you returned the envelope to Miss Kay——

The Court: I think you two lawyers would be better off if you would forget you understand the Italian language.

Q. When you returned the envelope to Miss

424 Kay, did you say anything to her? Did she say anything to you? A. No, she told me nothing, only she wanted the receipt that I had. I said I couldn't give it to her because I had to return it here, and she copied down something there.

Q. You eventually did give that receipt back to her, did you not? A. I think I did.

Q. After you had given the $25 to Miss Kay, did you at any time see Mr. Bauersfeld? A. No; I don't even know him.

Q. Did you know Miss Kay before she came to your home on the first evening when you gave her the $25? A. No.

425 Q. How did you happen to meet her? A. She came to my house.

Q. Did she come alone? A. With an automobile. I didn't know whether there was anybody else in the car. I didn't see.

Q. When she came in did she mention anybody's name? A. No.

Q. Just began to talk to you about the Home Loan? A. She asked me if I wanted to make application. I says, I have already made application. And she asked me if I was the owner.

Q. Then was anything said further about helping to get this loan? A. She says she could help me.

426 Q. At that time did she say who she was? A. She said she could help me with the loan because she worked there.

Mr. Serri: Now, I object. That is an incorrect translation. The witness did not say that she worked there.

The Court: Well——

Mr. Serri: No, no, no, this is vital. I 427
move to strike it out, and I think Mr. Scileppi will agree with me on that.

The Court: Please, now. I understand the language, but you know I will clear it up for both.

Mr. Scileppi: You said, she said she worked, is that right?

The Court: Put it to him in Italian.

Mr. Serri: She never said she worked there.

The Witness: Yes, that she could help me. Yes, I thought she did work in there. 428

The Court: Did she say she worked for the Government, for the Home Loan Corporation?

The Witness: She said that she could help me to get the Home Loan, and I figured that she worked for the Government.

Mr. Serri: That is different.

The Court: "And I figured that she worked for the Government," that may be stricken out.

Mr. Serri: I don't move that that be stricken out. I want it in because that is his own conclusion and it explains exactly 429
the blunder that has been made in making the indictment.

Mr. Scileppi: I object to the remarks of counsel.

The Court: I told you at the beginning I did not want any remarks, Mr. Serri or Mr. Scileppi. I will take care of that when the time comes. We don't let the proof take care of itself, without comment; I am mak-

430 ing notes. I am not trusting to memory. I will take care of that when the time comes.

Q. You finally did go to the Home Loan offices, didn't you? A. Yes, sir. I went there when they called me, when they wrote to me.

Q. When you went there, who did you look for? A. I don't remember the name. I had a postal card in my hand.

Q. Did you look for anybody in particular when you went there? Did you look around to see if you recognized anybody? A. I looked to see if I could find Miss Kay.

431 Q. Did you find her there? A. No.

Q. Did you expect to find her there?

Mr. Serri: I object, your Honor; that is clearly prejudicial on these questions.

The Court: Objection sustained.

Mr. Serri: It is trying to bring in indirectly what has obviously been thrown right out by his own testimony.

The Court: You see, you adopt a twofold attitude, when I wanted to strike out what he figured in his own mind, because it helped

432 you, you wanted it to stay in; then when he testified he went over there because he figured in his own mind he might meet her there, you object. I think it all ought to go out.

Mr. Serri: Because it clears up the situation.

The Court: You shouldn't let one piece of figuring that he figured in his own mind in and the other one out. Be consistent. I

think that all ought to go out, what he figured in his own mind. Whether he expected to find her there or not does not matter. 433

I am interested in knowing one thing that has not been brought out, what she said when she got the $25. That is not clear yet, Mr. Scileppi.

Q. Now, Mr. Sulfaro,——

Mr. Scileppi: I will develop that.

Q. (Continuing)—did you ever send those letters? 434

Mr. Serri: That is conceded, that defendant sent those.

The Court: In the defendant's handwriting or typewritten?

Mr. Serri: Typewritten or handwritten.

Q. Have you a typewriter home? A. No.

Mr. Serri: That is conceded, he has not.

A. (Continuing.) I haven't even got a pen, to write. 435

Mr. Scileppi: I offer them in evidence.

Q. You did not know anything about these, did you? A. No.

(Marked Government's Exhibits 18 and 19 in evidence respectively.)

436 Q. Now, then, you told us a moment ago that Miss Kay said she was going to help you with the Home Loan. A. Yes, but she ruined me.

Mr. Serri: I object to that.

The Court: Strike it out.

Mr. Serri: I object.

The Court: It is out.

Mr. Scileppi: It is out.

Mr. Serri: Yes, it is out.

Mr. Scileppi: Well, he isn't responsible for the witness, Mr. Serri, any more than I am or you are.

437 Q. Tell us what she said at that time, Mr. Sulfaro, please. A. The first time she came to my house?

Q. Yes. She didn't come there to have tea with you, or anything, did she? A. The first time she came there she asked me if I was the owner. I said yes.

Mr. Serri: I object. We have gone over this.

438 The Court: Yes, but I think there is something left out that clears it up. I think you had better let him give it all. I will overrule the objection. Give the whole conversation.

A. "Do you want me to make application for you?" I said, "I already made it." She says, "Well, that doesn't make any difference, Mr. Sulfaro. I can help you anyway, if you want." I think——

Mr. Serri: Now again we come to that question of believing, and so forth, Judge. 439

The Court: I will take care of that.

A. (Continuing.) I thinking that she worked here, I said, "Yes".

The Court: "I thinking that she worked here," is stricken out. "Yes", stands.

A. (Continuing.) Then she says, "All right, Mr. Sulfaro, I will help you." She asked how much was the mortgage, first mortgage. And she asked me about the second mortgage, and she took that information down, how much the mortgages were. Then she says, "All right, I will see that you get the loan as quick as possible." And she went away. 440

The Court: Wait a minute. Did she get the $25 that time?

The Witness: No, the $25 I gave her when I got the letter from the lawyer of foreclosure.

Mr. Scileppi: I would like to read Exhibits 18 and 19 to the jury.

(Mr. Scileppi reads Government's Exhibits 18 and 19 to the jury.) 441

Q. After you made your application for the Home Loan, how many times did you go to the office of the Home Loan? A. Three or four times.

Q. On how many of those occasions had you received notices to come up to the Home Loan offices? A. About four times.

442 Q. In other words, you would come up to the Home Loan office every time you would receive a notice? A. Yes.

Q. You never went up of your own volition? A. I went there once to find out what they were doing.

Cross examination by Mr. Serri:

Q. Who introduced Miss Kay to you? A. Nobody.

Q. Do you know a certain insurance agent by the name of Aronowitz? A. Yes.

443 Q. You know him very well, don't you? A. Yes, I know him. He makes the fire insurance policies for me.

Q. And isn't it a fact that Mr. Aronowitz brought Miss Kay to you? A. I didn't see Mr. Aronowitz.

Q. No, answer that question directly. I did not ask you whether you saw Mr. Aronowitz. Did he bring Miss Kay to you and introduce her? A. If he asked her, I don't know, but I didn't see Mr. Aronowitz.

Q. Didn't he come with Miss Kay? A. No, I

444 didn't see him.

Q. Why are you trying to hide the fact that Aronowitz came there?

Mr. Scileppi: I object to that type of question.

The Court: Sustained.

Mr. Scileppi: It is manifestly unfair.

Q. Didn't you talk to Mr. Aronowitz afterwards

about it? A. Yes, I spoke to Mr. Aronowitz about this affair. 445

Q. On August——

Mr. Scileppi: Just a minute. May we have the answer there? I believe the answer was, yes, I spoke to Mr. Aronowitz afterwards about this affair.

Mr. Serri: That is not disputed. That is what he said.

The Interpreter: He did not say that. He was going on to say something else. He said, "but"—that is all.

The Court: Tell him to finish the answer. 446

Mr. Serri: He stopped, that is all.

The Witness: No.

Q. On August 27th did you get that letter from Mr. Bauersfeld? A. This one I don't remember.

Q. Now, Mr. Sulfaro, please look at that and look at the envelope. You got that letter all right, didn't you? A. I don't remember that. I received so many letters I don't remember if these are the letters I received.

Q. Don't you remember Miss Kay writing that receipt on the back of the envelope? A. Yes, and this is the receipt she made for me, but I don't know if this is the letter she took. She took more than one. 447

Q. I didn't ask you what letter she took. Isn't that the letter of August 27th, and isn't that the envelope of August 27th? A. If it is the same date, it must be this one I received, and I gave it to her.

Q. And that is the time you gave her the $25 to

448 pay on account of the interest? A. Yes, but she didn't give it to him.

Q. Didn't you telephone to her either the following day or shortly after not to pay that interest? A. No.

Q. You had been having difficulties, hadn't you, with your first mortgagee and your second mortgagee? A. With both of them.

Q. And you had asked Miss Kay to go and see them and try to help you? A. Yes.

Mr. Serri: That is all.

449 Re-direct examination by Mr. Scileppi:

Q. Did you look for Miss Kay or did Miss Kay look for you? A. (In English.) Miss Kay looked for me.

(Witness excused.)

FELICIA SULFARO, being duly sworn through Interpreter Pasquale, testified as follows on behalf of the Government (through the Interpreter):

450 Direct examination by Mr. Scileppi:

Q. Mrs. Sulfaro, you live at 2116 Bath Avenue, Brooklyn? A. Yes, sir.

Q. And you and your husband own the property, don't you?

Mr. Serri: Pardon me. Is it about a couple of letters?

Mr. Scileppi: Wait a minute.

A. I was the owner alone.

Q. Now, you made application for the Home Loan, didn't you? A. Yes, my husband had done it. 451

Q. Have you a typewriter in your house? A. No.

Q. Do any of your children typewrite?

Mr. Serri: That is conceded; we wrote these letters.

A. No.

Mr. Serri: It is conceded by the defendant, Mr. Scileppi, that we wrote the letters. 452

Mr. Scileppi: That is all right; there is no question about it, but let us find out now.

Q. Do you know anything at all about these letters, Mrs. Sulfaro?

Mr. Serri: Of course she doesn't.

A. I don't know anything about it.

Q. Were you present—don't you feel well, Mrs. Sulfaro?

The Court: Better take her off. Ask her if she would rather come back some other time. 453

The Witness: No, I cannot tell, my back hurts me.

Mr. Scileppi: I will withdraw this witness.

Mr. Serri: We are willing to concede what she will testify to.

Mr. Scileppi: I will take her off. These two will be offered.

Mr. Serri: No objection.

454 (Marked Government's Exhibits 20 and 21 respectively in evidence.)

(Witness excused.)

HERBERT BAUERSFELD, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

455 Q. Mr. Bauersfeld, you are an attorney and counselor-at-law? A. I am, sir.

Q. How long have you been admitted to practice in this State? A. Since 1914.

Q. During your career as an attorney you have had association with various title companies, have you not? A. I have.

Q. As a matter of fact, you have specialized in law pertaining to real estate? A. I have.

Q. You had a client by the name of Marie Jonner? A. I did.

Q. Was she the second mortgagee on premises 2116 Bath Avenue, owned by Mrs. Felecia Sulfaro?

456 A. She was.

Q. Do you know the Sulfaros, John and Felecia? A. I have met them, yes.

Q. Did you know them before August 17, 1934, the date you sent them a notice? A. I had seen them before that time.

Q. Did they know you? A. Not very well.

Q. Did you collect the interest payments from them or did your client collect them? A. Well,

when they paid, they paid to my client, but I usually sent out the notices. 457

Q. I show you this paper, Mr. Bauersfeld, which is Goverment's Exhibit 16 in evidence, and ask you if that is your signature? A. Yes.

Q. Is that the notice that you sent to Mrs. Felecia Sulfaro with respect to the payment of interest? A. That is notice in reference to two instalments which were then in arrears.

Q. Do you know this defendant, Miss Kay, or Gertrude Klein, or G. Kay? A. I don't.

Q. Have you ever had any business relations with her? A. No, sir. 458

Q. Did you authorize her to collect any payments from these Home Owners on behalf of your client?

Mr. Serri: I object to that. There is no claim of any kind, that we were authorized to collect. We did not collect. There is no charge we collected.

Mr. Scileppi: I wanted to make sure.

Mr. Serri: No, no, I object to it.

The Court: Overruled.

Mr. Serri: Exception.

459

A. No, I did not.

Q. Never spoken to this lady? A. Never.

Mr. Serri: We don't make any claim to have spoken to this man.

Q. You sent a notice on the 17th of August, 1934? A. If that is the date on the letter, I did.

Q. When thereafter for the first time did you see this defendant? A. In court yesterday.

460 Q. Did your client or did you on behalf of your client receive the interest payments that were then in arrears? A. We did not.

Q. Are they still in arrears?

Mr. Serri: I object to that as absolutely immaterial.

The Court: Sustained.

Q. Do you know whether or not a Home Loan was given on those premises, 2116 Bath Avenue?

Mr. Serri: I object as immaterial.

461 The Court: Sustained. Did you get that $25 payment, Mr. Bauersfeld?

The Witness: No, sir, I did not.

The Court: That is all that is material.

Q. Does your client still hold the second mortgage on those premises?

Mr. Serri: I object as immaterial.

The Court: That is immaterial. Sustained.

Mr. Scileppi: That is all.

Mr. Serri: No cross examination.

(Witness excused.)

462 ———

LIBERATA BENEMERITO, called as a witness on behalf of the Government, having been duly sworn through the interpreter, testified as follows:

(Through Interpreter Pasquale:)

Direct examination by Mr. Scileppi:

Q. Where do you live, Mrs. Benemerito? A. 1315 69th Street.

Q. How long have you lived there? A. Eight 463
years.

Q. Are you a widow? A. Yes.

Q. How many children have you got? A. Seven.

Q. Did you file an application with the Home Owners' Loan Corporation? A. Yes.

Q. Is this the application? A. Yes.

Mr. Scileppi: I offer it in evidence, if your Honor pleases.

Mr. Serri: No objection.

(Marked Government's Exhibit 22 in evi- 464
dence.)

Q. Do you know Miss Kay? A. Yes.

Q. How long have you known her?

The Court: Wait a minute. Are you through with that woman, Mrs. Sulfaro? She is pretty sick back there. Let her go home, if you are through with her. Do you think you will need her later on?

Mr. Scileppi: No.

The Court: If so, you can bring her back 465
tomorrow.

Mr. Scileppi: There was only one fact, but I think we can get along without it.

The Court: All right, let her go home, otherwise she will collapse back there.

Mr. Scileppi: You won't need her, will you, Mr. Serri?

Mr. Serri: No, not at all.

466 Q. How long did you say you have known Miss Kay? A. Two years.

Q. Who made out that application for you? A. We made out the application.

Q. Who do you mean by "we", Mrs. Benemerito? A. I did.

Q. Did you know Miss Kay before you made out the application?

Mr. Serri: Could you speak a little louder, Madam? If the Court please, please instruct the interpreter to ask her to speak a little louder.

467 The Court: Yes, see if you can speak a little louder.

A. A compare of mine, godfather of mine, took her to me.

Q. Was that in the month of May, 1934? A. Yes.

Q. What happened when you met Miss Kay in the month of May, 1934? A. I wanted my house put in order with the Home Loan.

Q. Did you give Miss Kay any money to do that? A. Yes.

468 Q. What did you give her? A. $50.

Q. How did you give her the $50? A. She made the application for me and she would adjust everything for me.

Mr. Serri: I object, your Honor, right there. It is admitted right here in the record that Miss Kay did not make the application. The very document shows that she made it and she so testified.

The Court: What was she to do for the $50 that you gave her? 469

The Witness: She was to adjust the second mortgage and she was to adjust the first mortgage.

Q. Is that all? A. Yes.

Q. Wasn't she to fix up the application?

Mr. Serri: I object to putting that in her mouth that way.

The Court: We will see——

Mr. Serri: That is greatly prejudicial. She hasn't testified that way at all. She has testified, no, that is all, and then he puts in something else. 470

Mr. Scileppi: Then——

Mr. Serri: No, that is highly prejudicial.

Mr. Scileppi: We have an affidavit signed by this lady.

Mr. Serri: I object to that, Judge.

Mr. Scileppi: We are going into this.

The Court: When I get through stating the law, Mr. Serri, you are going to find you are altogether—you and I don't agree on the law. 471

Mr. Serri: That is a different proposition, Judge; I am not intimating that you and I agree.

The Court: I had better tell you at two o'clock what I am going to charge the jury and then you won't think these things are so important. Will you clear that up? You gave her the $50 after you made your application, is that right?

472 — Mr. Serrie: Pardon me, your Honor, that is not true, and the dates we will show, I think, you are misinformed on that.

The Court: Then we will put it this way: When did you give her the $50, before you made the application for the Home Loan or after?

The Witness: Before.

The Court: Who made out that application for the Home Loan?

The Witness: Then I went and made the application afterwards.

473 The Court: Who wrote the application out?

The Witness: Mr. Bredzian.

The Court: Do you mind if I put these questions, Mr. Scileppi? I think I can get it very quickly. You gave her these $50 before you made your application, is that right?

The Witness: Yes.

The Court: And you say that she was to adjust the first and second mortgages for the $50, is that right?

The Witness: No; then she wanted more money.

474 The Court: To do what?

The Witness: To adjust everything and then we would cut in half, split in half what she would adjust on the second mortgage.

The Court: Did you ever tell her you were making an application for a loan from the Government?

The Witness: No, because I made it afterwards.

The Court: Well, when you gave her the $50 to adjust these mortgages, what did you expect her to do? What did you tell her, anything? 475

The Witness: That she would do everything, she would make application and adjust the house for me.

The Court: Application for what?

The Witness: To adjust the house with the Home Loan.

The Court: Well, she knew when you gave her the $50 that you were making this application for the Home Loan, is that right? 476

The Witness: No, she said she would make it for me.

The Court: All right; you had better take her over.

By Mr. Scileppi:

Q. And you gave her a $75 check, didn't you? A. Yes.

Q. Where did you get this check from? A. From the City.

Q. For what? 477

Mr. Serri: I object, your Honor. Is that material?

The Court: It doesn't matter one way or the other.

Mr. Serri: It does. It is an inflammatory question, because it is a pension check. It is very prejudicial.

Mr. Scileppi: You are saying it is prejudicial.

478 Mr. Serri: No, no. In your opening you made a great deal about that.

The Court: But you men must remember you have a jury here. I wouldn't consider it prejudicial. The fact is she got $50. Let us see how the transaction was made. I will charge the jury that they should not be prejudiced. We are trying to get the facts in the regular order. You cannot get it in the middle and then stop.

Mr. Serri: There is no dispute that we received the $50.

479 The Court: If you hadn't said anything about prejudice, the jury might not have thought about it.

Mr. Serri: That is possible.

The Court: My idea is to get the picture of the transaction in chronological order. That is all I am allowing it for, and I will charge the jury, at your request, to form no prejudice because it was a relief check or otherwise.

Mr. Serri: We received a check of $75 and gave her back a check of $25. We received $50 on June 5, 1934. Is that correct?

480 Mr. Scileppi: I intended to introduce that check in evidence to show she deposited it to her own account.

Mr. Serri: Oh, well, of course,——

Mr. Scileppi: If your Honor please, that is——

The Court: Please put your question. I can see I can get nothing from this. So you put your question. I overrule your objection.

Mr. Serri: Exception. 481

Mr. Scileppi: May I have an answer to that last question?

The Interpreter: Will you read it?

(Reporter repeated last question.)

A. For the children.

The Court: All right; that is all.

A. (Continuing.) The City sent it to me for the children.

Q. You gave her the $25 check? A. Yes.

Q. Did the defendant give you back anything? 482

A. She made out a check for $25 and left it with me.

Q. What happened after that, Mrs. Benemerito?

A. The man from the company wanted more money.

Mr. Serri: Please add "the first mortgagee".

A. (Continuing.) The first mortgagee.

Mr. Scileppi: Now,——

Mr. Serri: Now, is there any dispute she said the company, the first mortgagee? 483

The Court: Why talk to each other? Why not leave it to the interpreter?

Mr. Serri: I thought he would agree, because that was the correct translation.

The Court: I ought to put you both where you cannot hear the Italian. If you will give a little of the answer at a time, we will get along. (Addressing the interpreter.)

484 The Interpreter: I am trying to get her to talk slower.

The Court: You split your sentences up and then you won't have too much to carry.

A. (Continuing.) When I gave her the $50 she left a letter with me and a ticket. "When the first mortgagee comes to you, send him to me with this ticket." Then when he came, I gave him the letter and the ticket, and when he came, with the letter and the ticket, he went to her, and took the $50 back.

485 Q. Is this the receipt that Miss Kay gave you at the time she received that $75 check? A. Yes.

Mr. Scileppi: I offer it in evidence, if your Honor please.

Mr. Serri: No objection.

(Marked Government's Exhibit 23 in evidence.)

Mr. Scileppi: Mr. Woods, please.

(A man stands up in the court room.)

486 Q. Is this the man that came to your home, Mrs. Benemerito? A. Yes.

Q. And you gave him the card? A. Yes.

Q. Had you ever seen Mr. Woods before? A. Yes, sure. He came to collect at my house.

Q. He is the man that was taking care of the first mortgage payments, wasn't he? A. Yes.

Mr. Scileppi: May I at this time read this exhibit to the jury?

Thank you, Mr. Woods. 487

(The man indicated sits down in the court room.)

(Mr. Scileppi reads Government's Exhibit 23 to the jury.)

Q. Now, when you gave that money to Miss Kay was there anything said about how quick the application would be made for the loan?

Mr. Serri: I object to that, the form, putting in the mouth of the witness the words. A very suggestive and prejudicial thing. 488

The Court: Yes, you may change the form.

Mr. Scileppi: She has already testified as to the application.

Mr. Serri: But she has already testified it was not——

The Court: I see you are both talking again. You are going to get yourselves——

Mr. Serri: I beg your pardon.

The Court: He asked her if anything was said about the time element in a general way.

Q. How quickly was Miss Kay to get the Home Loan for you when you gave her that check? 489

Mr. Serri: I object to that.

The Court: Sustained.

Q. Did Miss Kay say anything as to how long you would have to wait before you would get the Home Loan?

Mr. Serri: I object to that.

490 The Court: I will allow it.
Mr. Serri: Exception.

A. Two or three months—three or four months.

Q. Did you give that check to Miss Kay the first time you met her or had you met her previously thereto? A. The second time that I met her.

Q. Was your daughter present on both occasions? A. Yes.

Q. And did Miss Kay talk to your daughter and did she talk to you? A. Yes.

491 Q. Was your daughter really acting as your interpreter? A. Yes.

Q. As a matter of fact, your daughter has acted as interpreter for you when you have come to the Federal Building too, hasn't she? A. Yes.

Q. Did Miss Kay ever say that she would fix up things with the Home Owners' Loan Corporation?

Mr. Serri: I object as highly prejudicial. At this time I am going to ask for a mistrial, if this keeps up.

The Court: You are not going to get it, so you might as well not ask for it.

492 I have ruled the question out.

Mr. Scileppi: I withdraw it.

Cross examination by Mr. Serri:

Q. Mrs. Benemerito, what were you paying monthly on the first mortgage? A. As I had it, fifty or sixty dollars.

Q. What was the agreement you had with the

first mortgagee? What were they asking for? 493
A. The first mortgagee, I paid him that way; as I had it, I would give him.

Q. Yes, but what were they asking each month from you? A. That which I had. When I got paid, I paid.

Q. Didn't they ask you for a certain sum each month? A. No.

Q. Didn't you tell Miss Kay the first time the mortgagee asked so much each month, and I am having difficulty in paying so much? A. I told Miss Kay that the first mortgagee wanted fifty or sixty dollars, and I would give it as I had it. 494

Q. Didn't you tell her that you were finding it hard to make the payments? A. Yes, I told her.

Q. And how much were you paying on the second mortgage each month? A. The second mortgagee was more insistent, and it was the second mortgagee that gave me more trouble.

Q. How much were you paying, how much on the second mortgage? A. I paid nothing every month to the second mortgagee.

Q. What was he asking you to pay? A. The second mortgagee was supposed to be paid from the money from the City; not to pay the first mortgagee. 495

Q. How much was the second mortgagee asking you to pay each month? A. I paid the second mortgagee in January, and I didn't pay any more.

Q. Well, first and second mortgages, how much had you been paying each month, first and second? A. I didn't pay any attention to how much I paid to the first or second mortgagee. The first I would pay; the second I didn't bother with at all.

496 Q. Didn't you tell Miss Kay it was over a hundred dollars a month you were paying, and it was hard for you to pay that? A. No, I didn't say anything like that to Miss Kay.

Q. I ask you to look at that paper. Is that your cross? A. I don't remember if that is my mark.

Q. Didn't you make that cross, Madam, and didn't your daughter tell you about it? A. No, I don't think so.

Mr. Serri: I will have it marked for identification at this time.

497

(Marked Defendant's Exhibit E for Identification.)

Q. Did you tell Miss Kay what the income was from the property, what rentals you were getting? A. Yes.

Q. How much? A. $35, and $12 for the garage.

Q. That is $47 income from the house? A. Yes.

Q. Besides that you were getting this pension check of $75 a month, is that right?. A. Yes.

Q. And were several of your children working? A. One worked, the daughter.

498

Q. You paid Miss Kay the $50 on June 5th, didn't you, 1934? A. Yes.

Q. And on June 11th she paid that $50 to the first mortgagee, isn't that right? A. The first mortgagee went to get it.

Q. She paid it to him, didn't she, on June 11, 1934? A. Yes.

Q. And after that Miss Kay did nothing further in this matter, did she? A. No.

Mr. Serri: Now, then, at this time, your Honor, I move to strike it out, as it shows that the application filed for this applicant was on June 29, 1934. Whatever transactions we had, or did, were on June 5th and June 11th, and nothing further after that. At that time she was not an applicant for a loan. 499

The Court: I deny your motion.

Mr. Serri: Exception.

(Witness excused.)

Mr. Scileppi: May I, if your Honor please, recall the last witness so she can identify a check that is on its way over? 500

Mr. Serri: We will admit it without the necessity of calling her.

HERBERT E. WOOD, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. What is your occupation, Mr. Wood? A. Mortgage loan representative for the New York Life Insurance Company. 501

Q. How long have you been with the New York Life Insurance Company? A. A little over three years.

Q. Does the concern by which you are employed own a mortgage on premises 1315—69th Street, premises owned by Liberata Benemerito? A. Yes.

502 Q. Were you taking care of the servicing of that mortgage? A. Yes.

Q. Making the collection of interest payments? A. Yes.

Q. And contracting the property owner? A. Yes.

Q. Do you remember speaking to Mrs. Benemerito some time in the early part of June, 1934? A. I have a record of it here.

Q. You made a record of it? A. Yes.

Q. You remember the occasion, don't you? A. Yes.

503 Q. What was said between—well, you remember speaking to her; Miss Kay at that time was not present, is that correct? A. No, Miss Kay was not present.

Q. After you spoke with someone—and by the way, with whom did you speak? Don't give us the conversation, I am talking about the occasion when you went to Mrs. Benemerito's home. Did you speak to Mrs. Benemerito or Miss Benemerito? A. Always through an interpreter.

Q. And something was said to you. Then what did you do? A. I called. Collection had previously been made. I showed a receipt that was
504 left by a Miss Kay, and Mrs. Benemerito advised me through the interpreter that no further payments would be made; that I would have to see Miss Kay.

Q. You then went out and saw Miss Kay? A. First I took a copy of the receipt.

Q. That is right. A. And made it for the record.

Q. Yes. A. I left Mrs. Benemerito's house and proceeded to Miss Kay's home. I would have to

refer to my record to give you the records of that 505
conversation.

Q. Have you read your records since you have made them? A. Just briefly, that is all.

Q. Would you need your records to refresh your recollection? A. I would.

Q. Then look at your records.

The Court: Is that receipt in evidence?

Mr. Scileppi: Yes, sir.

The Court: May I see it?

Mr. Scileppi: Yes (handing a paper to the Court).

The Court: I did not hear you read it to 506
the jury. That is why I did not know.

A. That was on the night of June 11, 1934.

Q. Do you remember the conversation you had with Miss Kay and where the conversation took place? A. I don't remember it. I have a copy——

Q. Please give us the conversation that occurred, and, of course, if it is necessary to refresh your recollection, do so from your records.

The Court: Don't read your copy. Read it to yourself. Refresh your recollection and 507
then testify.

A. I asked Miss Kay if she had been authorized by our company to collect funds for our account. She advised that she had not. I asked Miss Kay if she was in the employ of the United States Government.

Q. That is right. What did she say? A. No. I asked Miss Kay if she had any financial in-

508 terest in the property. Her answer was no. I then demanded the $50.

Q. You made a demand for the $50. Was there a conversation about that $50? A. Yes, I advised Miss Kay that I had a copy of the receipt that was left at the house, and inasmuch as that receipt read in part that for service rendered account New York Life Insurance Company arrears, I advised her I was the only one with authority to act, and demanded the $50, which she gave me.

Q. Was the question brought up of filing an
509 application with the Home Owners' Loan?

Mr. Serri: I object as very leading and prejudicial.

The Court: Answer yes or no, first.

A. First, the Benemerito home——

The Court: You must answer yes or no. Was there any question——

The Witness: Yes, there was.

The Court: Now you are going to ask for the conversation and for the date.

What was the date of that interest paid to
510 your company by Miss Kay?

The Witness: June 11, 1934.

Q. That is the night you went down and demanded it, is that correct? A. I left the Benemerito home to go to Miss Kay's home, yes.

Q. And that is when you got that $50? A. That is right.

Q. What other conversation did you have with Miss Kay?

The Court: Now, you can ask for this con- 511
versation on the Home Loan.

Mr. Scileppi: Yes.

A. Well, inasmuch as it had been mentioned to me at the Benemerito home——

Mr. Serri: I object to anything that was said——

The Court: No; you just tell the conversation you had with this defendant. That is all you can tell at this moment on that question.

512

Q. Did you say anything to Miss Kay with respect to any Home Loan application?

Mr. Serri: I object to that.

The Court: No; we had a question before that, Mr. Scileppi, that he is looking up his notes, to give you the answer on.

A. Yes, I had a conversation with Miss Kay——

The Court: Don't read from the paper, Mr. Witness. You say refresh your recollection first and then tell us after you refresh 513
your recollection what the conversation was.

A. Miss Kay advised me that she was to prepare and file an application in the Home Owners' Loan Corporation and facilitate its progress and further to prevent the second mortgagee from annoying the owner, Benemerito.

Q. You took that $50 from Miss Kay, did you not? A. I did.

514 Q. That was on the 11th. And Miss Kay had received that, according to your information, when? A. June 5th.

Q. Was anything said with respect to the length of time elapsing between the receipt of money by her and the payment of it by her to you? A. Yes.

Q. What was said? A. I asked her why she kept the money for that period of time.

Q. Yes. A. She advised me she intended to call at the New York office.

The Court: Mr. Scileppi, do you claim that that money was given to Miss Kay to pay
515 this insurance?

Mr. Serri: Of course not.

Mr. Scileppi: Of course not; the receipt speaks for itself.

Mr. Serri: It was for services. That is our claim.

Mr. Scileppi: I mean, the receipt speaks for itself.

The Court: I am just trying to settle this in my own mind.

Mr. Scileppi: That is all right.

The Court: Did you see anything in that
516 receipt which called for her to pay your company that money? You don't, do you?

The Witness: Yes.

The Court: What do you see in that receipt? Do you see anything in that receipt which called for her to pay your company that money? Read it.

The Witness: $50 for service rendered account New York Life Insurance Company arrears.

The Court: Service rendered doesn't mean interest paid, does it, by any wide stretch of the imagination? 517

The Witness: No, but she had no right to service, no authority to service.

Mr. Serri: That is a different question.

The Court: That is what you said to her?

The Witness: Yes.

The Court: It was then she gave you the $50?

The Witness: Yes.

Mr. Scileppi: Surely. That is all. You may question. 518

Cross examination by Mr. Serri:

Q. Didn't Miss Kay tell you she had been to your company's office several—at least once or twice on this matter? A. Once.

Q. And that they had intimated that they probably would reduce their monthly payments? A. No, sir, that was left entirely to me.

Q. And didn't she say that the person that she had spoken with had intimated to her or said in substance, "We are considering reducing the monthly payment on your representation as to the condition of the family"? A. No, sir. I located the man who spoke to her—— 519

Q. No, no, Mr. Wood, did she say that in substance to you? A. No, Miss Kay just gave the money to me.

Q. She didn't say anything about that? A. No, sir.

Q. You didn't put in your report of the con-

520 versation anything about that angle of the conversation? A. Repeat that, please.

Q. I say, you didn't put in your copy, you made a fairly complete record of your conversation of the night of the 11th? A. Yes, sir.

Q. And did you in any part of that conversation put this in, in substance, Miss Kay told me that she had been to my company once or twice? Did you put that down? A. Once.

Q. You put that down? A. Yes.

Q. And did you put this, and she told me that the representative with whom she spoke at the company intimated or said, "We will consider
521 reducing the monthly payments"? A. No, sir.

Q. You are sure of that? A. Positive.

Mr. Serri: That is all.

Re-direct examination by Mr. Scileppi:

Q. When you went over to this defendant Kay, you did not go over there in a friendly frame of mind, did you?

Mr. Serri: I object to it as immaterial.

522 The Court: Sustained. I think we have all we can get out of this witness.

(Witness excused.)

The Court: We will take a recess until 2 P. M.

(Recess until 2:00 P. M.)

(Met pursuant to recess at 2:00 P. M.; present as before.) 523

MARY BENEMERITO, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Miss Benemerito, you are the daughter of Rosalie Benemerito? A. Liberata Benemerito.

Q. You are the daughter of Liberata Benemerito? A. Yes.

Q. Do you know the defendant, Gertrude Kay? 524
A. Yes.

Q. She came to your house, did she not? A. Yes.

Q. Did you speak to the defendant when she came to your house? A. Yes.

Q. What did you say to her and what did she say to you? A. Well, when she first came over to my home——

Q. Will you speak loudly enough, Miss Benemerito, so that the jurors back here can hear you? A. When she first came over to my home she told my mother she was going to fix up everything, so I spoke to my mother, and my mother 525
says, "All right".

The Court: She was going to do what?

The Witness: Fix up everything with the Home Loan.

Q. Did you give Miss Kay any money? A. Yes, $50.

526 Q. What was given to her, cash or check? A. Check.

Mr. Serri: If your Honor please, it is already in evidence, and we have admitted that.

Mr. Scileppi: Not yet.

Q. Is this the check she was given?

Mr. Serri: There is no dispute as to that.

A. Yes.

527

Mr. Serri: No objection.

Q. Now, at the time that the check was given, your mother got back $25? A. Yes.

Q. Tell us what the $50 was given to Miss Kay for. A. We had given $50 to fix up the Home Loan, to give the home to the Home Loan.

Mr. Scileppi: At this time I offer the check in evidence.

The Court: No objection?

528 (Marked Government's Exhibit 24 in evidence.)

Cross examination by Mr. Serri:

Q. Did your mother ask Miss Kay to get in touch with the first mortgagee and the second mortgagee? A. No, she spoke to my mother about fixing up the home, so she says she will take care of everything.

Q. Didn't your mother mention about the first 529
mortgage and the second mortgage? A. Yes.

Q. Didn't she ask Miss Kay to get in touch with them? A. I don't remember that.

Q. Now, Miss Benemerito, don't you know that your mother was hard up about paying the monthly payments on the first mortgage? A. Yes, I know that.

Q. And it was hard to pay the second mortgage? A. Yes.

Q. Didn't she say to Miss Kay, "See what you can do about these"? A. Well, yes.

Q. You are positive? A. I am not positive.

Q. You aren't positive about that? A. No. 530

Q. I now show you that paper and ask you if your mother made her cross on that? A. Yes.

Q. And did you tell your mother what it was? A. Yes.

Mr. Serri: I offer it in evidence.

The Court: Show it to the District Attorney.

(Defendant's Exhibit E for Identification now marked Defendant's Exhibit E in evi- 531
dence.)

Re-direct examination by Mr. Scileppi:

Q. Now, may I show you Government's Exhibit No. 23 in evidence and ask you if you ever remember seeing that before? A. Yes, this was the letter which she told me to give Mr. Wood.

Q. Was that made out at the same time that

532 this check was given to her? A. Yes.

Q. When was Defendant's Exhibit E in evidence made out, do you know?

Mr. Serri: The date speaks for itself, June 5th.

A. These were made out both at the same time. She gave us one to give to Mr. Wood and one she kept herself.

Q. One she kept herself? A. Yes.

Q. Well, do you know who put this cross on here, on Defendant's Exhibit E? A. May I see
533 that, please?

Q. Who put the cross on there, do you know? A. My mother.

Q. In your presence? A. Yes.

Q. And then you signed your name? A. Yes.

Q. Because you always interpreted for her? A. Yes.

(Witness excused.)

(Mr. Serri reads Defendant's Exhibit E in evidence to the jury.)

534 SALVATORE IOVINO, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Where do you live? A. 1834 West 9th Street.

Q. Do you own that house? A. Yes.

Q. Together with your wife? A. Yes.

Q. You filed an application for a Home Loan, did you not? A. Yes. 535

Q. Who made that application out? A. I did.

Q. Sometime after that application was made out did you see this defendant, Miss Kay? A. Yes.

Q. Where did you meet her? A. She came home.

Q. At your home? A. Yes.

Q. Did you know her before that? A. No, sir.

Q. Did she come alone or was she accompanied by someone? A. Alone, she was alone.

Q. When she came to your home, what did she say to you? A. She said to me, she says, "Want help?" I say, "How are you going to help? Will you give some money?" 536

And then she asked, "You make application for the Home Loan?"

I say, "Yes."

She says she want to try to help me. I say, "All right." She asked me a hundred dollars when everything was through.

Q. What do you mean, "when everything," when the Home Loan was given and everything was through? A. Yes.

Q. And she was going to help you in connection with the Home Loan application? A. To help the loan through quick. 537

Q. Are there any other—is this the application which you signed, Mr. Iovino? May I please ask you to look at it? A. Yes.

Mr. Scileppi: I offer it in evidence, if your Honor please.

Mr. Serri: No objection.

538 (Marked Government's Exhibit 24-A in evidence.)

Q. Have you a typewriter home, Mr. Iovino? A. No, sir.

Mr. Serri: It is conceded we wrote the letter.

Q. Do you know anything about this letter? A. I don't, no.

Mr. Serri: Why take up so much time?
539 We wrote the letter, concededly.
Mr. Scileppi: I offer it in evidence.
Mr. Serri: No objection.

(Marked Government's Exhibit 25 in evidence.)

Q. Did you send any telegrams to the Home Loan? A. No.

Mr. Serri: Conceded we sent them.
Mr. Scileppi: I offer it in evidence.
Mr. Serri: No objection.

540 (Marked Government's Exhibit 26 in evidence.)

Q. When the defendant came to your home did she leave her card with you? A. Yes, sir.

Q. May I please ask you to look at this card and inform me whether you have seen it before? A. Yes, sir.

Q. Is that the card that was left with you by the defendant? A. Yes.

Mr. Scileppi: I offer it in evidence. 541

Mr. Serri: No objection. Conceded.

(Marked Government's Exhibit 27 in evidence.)

(Mr. Scileppi reads Government's Exhibit 25 to the jury.)

Q. Did you see again Miss Kay after you made the arrangement—after she asked you for $100 to push the loan through quickly? A. I don't remember she coming.

Q. You don't remember her coming to your 542 house any more? A. No.

Cross examination by Mr. Serri:

Q. Foreclosure papers were actually served on you, weren't they? A. (No answer.)

Q. You understand my question? A. You are talking about the foreclosure papers?

Q. You received some papers to foreclose the mortgage on your house, is that right? A. Yes.

Q. Are these the papers which you received? A. Yes.

543

Mr. Serri: I don't want to encumber the record. That is conceded, that is the complaint and foreclosure against Miss Iovino. Otherwise I would offer it in evidence.

Mr. Scileppi: Yes, that is conceded.

Mr. Serri: It is conceded that is the complaint and foreclosure, Mamie Marshall, Plaintiff, v. Salvatore Iovino, Supreme Court, Kings County, dated July 17, 1934.

544 Q. After you got those papers did you deliver those papers to Miss Kay? A. No.

Q. To whom did you give those papers? A. When she came home, she take them.

Q. You gave them to her when you saw her? A. Yes.

Q. You gave her those papers? A. Yes.

Q. And you said, "I am in trouble, they are foreclosing on my home"? A. Yes.

Q. "The mortgagee—please see the mortgagee, please have him stop," didn't you say that in substance? A. I didn't say, please to stop. I said——

545 Q. "See what you can do." A. Certainly, she can do.

Q. I mean, that is what you asked her to do about your foreclosure? A. She didn't tell me to help for the foreclosure. She want to help make the Home Loan, to the head of the Home Loan.

Q. Has somebody told you to answer that way? A. Nobody tell me.

Q. Nobody told you? Now, don't you know that you made an agreement about the foreclosure with Miss Kay? Didn't you sign a paper with

546 Miss Kay? A. I signed one paper?

Q. Yes. A. Yes.

Q. And didn't you say, For services with reference to the foreclosure, so much, didn't you say that? A. For foreclose? No.

Q. Not at all? A. No.

Q. That is your best memory? A. Yes.

Q. Do you want to think it over again before I show you the paper? A. I don't remember that.

Q. Can you read English? A. A little bit.

Q. Look at that paper. Did you sign it? A. Yes. 547

Q. Now, looking at it, at the beginning part, does it refresh your recollection that you are wrong about this foreclosure? A. Yes, I remember this paper.

Q. And you remember——

Mr. Scileppi: Now, wait. What was the answer?

The Court: He said he remembered the paper.

Q. Now, did you not agree with Miss Kay to do something about the foreclosure and you were to pay her for that? A. I—— 548

Q. Did you or did you not? A. I told her to help for the Home Loan.

Q. Now, did somebody tell you always to make that same answer? A. I don't know what you say.

Q. To any question you are asked, "to help for the Home Loan"? A. (No answer.)

Q. Now, look at that paper again, that first paragraph. A. I don't——

Q. You don't understand it? Now, is it true, Mr. Iovino, you don't understand that the first part of that says you are to pay her a hundred dollars for her services in the foreclosure? 549

Mr. Scileppi: I object to that.

The Court: The paper speaks for itself.

Mr. Scileppi: I think counsel has gone far enough. The witness says he doesn't understand it.

550 Q. Why do you change—do you read English, I asked?

Mr. Scileppi: I object; the witness I do not believe does.

A. To give a hundred dollars for him to have the Home Loan.

The Court: Did you give her a hundred dollars?

The Witness: No.

Mr. Serri: Not a penny; no question.

551 The Court: Wait a minute. You signed that paper?

The Witness: Yes.

The Court: You wanted a Home Loan?

The Witness: Yes.

The Court: Did she say she would get you a Home Loan?

The Witness: She said she would try to help.

The Court: And if she could get the Home Loan, that would pay off the mortgage?

The Witness: When I got the Home Loan everything would be paid, a hundred dollars.

552 The Court: All right.

Q. Look at that paper again. Let me know, can you read or can't you read it? A. I read a little bit, but I cannot understand everything.

Q. What can you understand and what don't you understand? A. I cannot understand.

Q. What? What can't you understand on that paper? A. About the foreclosing.

Mr. Scileppi: I am going to object. 553

Mr. Serri: Please.

Mr. Scileppi: I am going to make a formal objection.

The Court: What is the question?

(Reporter repeated the question.)

Mr. Scileppi: I object. I am going to object to anything being read from that paper into evidence unless the paper is in evidence.

Mr. Serri: I am not asking him to read it into evidence. I am asking him—he may read it. I am asking if he understands, if he can understand it, to read it.

554

The Court: Answer as best you can.

Q. Can you read that paper? A. I read it a little bit, I say, but I cannot understand everything.

Q. Well, now, read again carefully to yourself.

The Court: Put the question again, after all the chance he has had to read it.

Q. Mr. Iovino, have you read it?

The Court: Can you read that paper?

The Witness: I read a little. I cannot understand everything, every word.

555

The Court: You read it a little bit, is that right?

The Witness: Yes.

Q. Let me ask you this: Do you understand that it says that you are agreeing to pay the hundred dollars for services in this foreclosure action? Do you understand that much?

The Court: Mr. Serri, first I will say this, the paper speaks for itself and it is not in evidence yet.

556 Mr. Serri: All right, I offer it in evidence.

The Court: That is the best way. Then, once you have it in evidence, the paper speaks for itself.

Mr. Scileppi: Let us get everything in.

Mr. Serri: All right, I offer it in evidence.

Mr. Scileppi: Certainly there is no objection on the part of the Government to this getting in evidence.

(Marked Defendant's Exhibit F in evidence.)

557 Mr. Scileppi: If you don't read it, I will.

Mr. Serri: I shall read it. We have nothing to hide in this matter.

The Court: You know, Gentlemen, you never can keep lawyers quiet. I never try to. Just once in a while, I try to remind them. That is their business.

Mr. Serri: We are not so bad, Judge.

The Court: No, you are all right, both. I get a little laugh out of it once in a while, and I hope the jury does.

(Mr. Serri reads Defendant's Exhibit F to
558 the jury.)

Q. Now, Miss Kay wasn't able to do that work and you didn't pay her anything, did you? A. Don't pay nothing.

Re-direct examination by Mr. Scileppi:

Q. Did you understand that you were to give Miss Kay $100 for trying to settle a foreclosure? A. Not for the foreclose.

Q. When you bought your house, did you have an attorney? Did you have a lawyer, an avocado? A. Yes. 559

Mr. Serri: I object to that.

The Court: The stenographer cannot get that down.

Q. Did Miss Kay tell you that she was a lawyer?

Mr. Serri: I object to that. There is no charge of that. That is highly prejudicial.

Mr. Scileppi: Let us find out what this $100 was to be given for. 560

Mr. Serri: I object, your Honor.

The Court: Just ask questions and don't argue, Gentlemen, and we will get along much better. I will rule on them as they come along.

Q. Did you read this agreement when you and your wife signed it? A. My wife no sign it. I sign.

Q. Your wife just put her cross there? A. I don't remember she put the cross there. I remember I signed it myself.

Q. How many of these were made, one or two? 561
A. (No answer.)

Q. This agreement, did you get a copy of the agreement? A. No,—what?

Q. She never gave you any, did she? A. No.

Q. Tell us what was said. Did she read it to you? A. Yes, she read it to me.

Q. She read it to you? A. Yes.

Q. What did you understand it to mean when she read it to you?

562 Mr. Serri: I object to that.

The Court: What did she say when she read it to you, that is the question, as near as you can remember? What did she say to you when she read that paper?

Mr. Serri: I object to that, your Honor.

A. She told me to give her a hundred dollars——

Mr. Serri: Exception.

A. (Continuing.)—to help out with Home Loan, when everything was through.

563 The Court: I think that is all right.

Mr. Serri: Exception.

Re-cross examination by Mr. Serri:

Q. You did not make any complaint against Miss Kay in this matter, did you? A. No.

Re-direct examination by Mr. Scileppi:

Q. You never paid her the $100, did you? A. No.

564 Mr. Serri: That is already testified.

Q. Did you receive any letters or any notices to attend at the Home Loan office?

Mr. Serri: I object to that. What is the materiality?

A. I have one letter and envelope.

The Court: I will allow it.

Mr. Serri: Exception.

Q. You had a letter and it was after you had 565
that letter that you would not pay the hundred dollars?

Mr. Serri: I object to that.

The Court: That is leading.

Mr. Serri: I object to the substance of it, absolutely immaterial. The question of why they didn't pay eventually is not in issue here. They are not suing for money.

The Court: No, because the Statute says, "attempt to solicit, and attempt to make a contract."

Mr. Serri: That is all right; we admit it. 566
We admit the contract. We introduced it ourselves.

(Witness excused.)

BERTHA REDNER, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mrs. Redner, are you part owner of premises 567
1760 Eighth Street, Brooklyn? A. Sole owner.

Q. You live there? A. Yes.

Q. You live there with your husband and family? A. Yes.

Q. Sometime in April, 1934, did you have occasion to come in contact with this defendant, Gertrude Kay? A. Yes.

Q. Or Gertrude Klein? A. Gertrude Kay, Miss Kay.

568 Q. That is this defendant sitting here? A. Yes.

Q. How did you happen to meet her? A. Through a friend of mine. She was recommended to me through a friend of mine.

Q. When you met her was there some discussion with respect to the condition of your home and the obtaining of a Home Loan? A. Yes.

Q. What did you say to her and what did she say to you? A. She said to me that——

Mr. Serri: I object to that, your Honor, leading.

The Court: I will allow it.

569 Mr. Serri: Exception. He immediately puts in the sing-song about the Home Loan, about the Home Loan, about the Home Loan.

Mr. Scileppi: Now, wait,——

Mr. Serri: Runs like a sing-song all through all of the questions.

Mr. Scileppi: It is a Home Loan case.

Mr. Serri: Now, if your Honor please, what conversation did you have with Miss Kay on such-and-such a date? Let us have it that way. That is the way to go about it, not to implant, did you say something about the Home Loan?

570 Mr. Scileppi: Just cool off, Mr. Serri.

Mr. Serri: No, it is highly prejudicial. That is why I am not cool.

Q. Did you file an application for a Home Loan?

The Court: That is withdrawn now anyway?

Mr. Scileppi: We will withdraw that, Mr. Serri.

Mr. Serri: Yes.

Q. Looking at the bottom of it, see if you recognize the signature. A. That is my husband's signature. 571

Q. Who made out that application, do you know? A. The handwriting looks very familiar. I think Miss Kay made it out, but it looks like, something like my husband's handwriting; I am not sure.

Q. That is your husband's signature down at the bottom here, Louis Redner? A. Yes.

Mr. Scileppi: I offer it in evidence.

Q. Now, do you remember—— 572

The Court: Wait, wait.

Mr. Serri: No objection.

(Marked Government's Exhibit 28 in evidence.)

Q. Do you remember when that application was made out? A. In April of 1934.

Q. Was it made out in your home? A. Yes.

Q. Do you remember who was present on the occasion when it was made out? A. My husband, myself and Miss Kay. 573

Q. Now, then, I am now talking about an application for a Home Loan; did you have any conversation with the defendant, Gertrude Kay?

Mr. Serri: I object to that, your Honor, for exactly the same reason. A little more adroitly done, but exactly the same thing.

The Court: All right; that is sustained.

574 Ask her what conversation she had about that paper.

Mr. Scileppi: That is just what I have asked her.

Q. Did you have any conversation with the defendant, Gertrude Kay, when that paper was signed? A. Yes, just that she said she would help us get the Home Loan a little quicker.

Q. Now, then, I show you this and ask you if you recognize it? A. Yes.

Q. Did you pay Miss Kay any money at the time that that application was signed? A. $40.

575 Q. Did you pay that $40—what did you pay that $40 for? A. For services to get the Home Loan.

Q. Did you draw the $40 from a bank or did you have it in cash? A. My husband drew it from the bank.

Q. Have you that bank book with you? A. Yes.

Mr. Serri: We admit we received $40.

Mr. Scileppi: You admit that?

Mr. Serri: We admit the receipt of $40.

Mr. Scileppi: Here is another one of those

576 letters.

Mr. Serri: Conceded. Defendant wrote it.

Mr. Scileppi: I offer it in evidence.

(Marked Government's Exhibit 29 in evidence.)

Q. Mrs. Redner, did you send any letters to the Home Loan after the application was made? A. No.

Q. Do you know of any letters that were sent? 577
A. No.

(Mr. Scileppi reads Government's Exhibit 29 to the jury.)

Q. Now, you knew Mr. Gershel, did you not, Mrs. Redner? A. Yes.

Q. And you knew Mr. Gershel's father? A. He was my second mortgagee.

Q. What was his name? A. Isaac Garshakow.

Q. And the second mortgage on your premises before your filing of your application for the Home Loan was about $1300? A. I think from eleven 578
to thirteen.

Q. Around that figure, approximately twelve to thirteen hundred? A. Yes.

Q. In addition to that, hadn't Mr. Garshakow advanced you certain sums to help you pay off some debts on the house? A. No. Just before the closing I had to sign an assignment in order to close for $300 in addition to the money——

Q. Did you negotiate with Mr. Garshakow and his son, Louis Gershel, who is an attorney, with reference, or with respect to, taking less than the amount of the face value of the second mortgage? 579
A. No.

Q. Who did that? A. Miss Kay.

Q. You did go to Mr. Gershel's offices, did you not? A. Yes.

Q. On how many occasions did you go to Mr. Gershel's offices? A. Once or twice, I think.

Q. Were you alone or were you accompanied? A. Once with Miss Kay.

Q. And once alone? A. I don't remember.

580 Q. Did you ever go to Mr. Garshakow's home? A. No.

Q. Did you ever take the matter up with the first mortgagee? A. We did send him several letters..

Q. You did? A. Before we even applied for the Home Loan, for a reduction on interest.

Q. You know Mr. Losee, do you not? A. I just met him once, I think, or twice.

Q. Was he the gentleman who closed your Home Loan? A. Yes.

Q. Did you have any discussion with him at the time of the closing of the Home Loan? A. I don't
581 think so.

Q. At the time that your Home Loan closed was the defendant present? A. Yes.

Q. Did your husband to your knowledge ever discuss with Mr. Gershel or Mr. Garshakow the reducing of the second mortgage? A. No.

Q. You don't know, do you? A. I do know.

Q. You know what? A. I know that he did not.

Q. That he did not? A. Yes.

Cross examination by Mr. Serri:

582 Q. Miss Kay, at your request, negotiated with the second mortgagee for reduction? A. I don't think it was at my request. I think she told me that she could try to reduce the mortgage.

Q. When she told you that, didn't you ask her, Go ahead and do it? A. Yes, I did.

Q. You were naturally interested in getting a reduction? It was for your benefit. A reduction would undoubtedly benefit you? A. But she didn't get any reduction.

Q. Now, please, please. Did I ask you that? 583
A. Well, I answered it.

Q. I asked you, if you got a reduction, that would be for your benefit, wouldn't it? A. It would.

Q. Likewise, if you got a reduction on the first, that would be for your benefit? A. Yes.

Q. And so you told Miss Kay to go ahead and see what you can do, didn't you? A. Yes.

Q. How much was the first mortgage? A. $7,000.

Q. How much? A. $7,000.

Mr. Serri: May I ask if that is what ap- 584
pears on the closing, $7,000, the closing statement?

Q. And the second mortgage was about thirteen hundred? A. Between eleven and thirteen. I don't remember exactly.

Q. How much, if you remember, was paid the first mortgagee on the closing? A. The first mortgagee, I think, got his full amount.

Q. And the second how much? A. The second was supposed to get $500, but I think he got about eight, besides signing an assignment for 585
$300.

Q. But you are not sure about your figures? A. No, I am not.

Mr. Serri: May I ask if the closing statement—what does the closing statement show as to the amount claimed by the first mortgagee and the amount paid?

Mr. Scileppi: The amount claimed was $7,885.43.

586 Mr. Serri: How much paid?

Mr. Scileppi: $7,585.

Mr. Serri: And the second mortgage, how much claimed and how much paid?

Mr. Scileppi: Claimed, $1,273.

Mr. Serri: Paid?

Mr. Scileppi: $814.67.

Mr. Serri: Does the closing statement show how much taxes were paid by the first mortgagee out of that amount allowed him?

Mr. Scileppi: Shows no payment of taxes.

Mr. Serri: Does it show how much the
587 taxes were in arrears?

Mr. Scileppi: No.

Mr. Serri: Isn't it? I mean, doesn't it show that the first mortgagee was to pay the taxes out of the amount allowed him? Doesn't your statement show that, or your papers?

Mr. Scileppi: No, because that lien was taken care of before the loan was closed.

Q. How much were the arrears of taxes, Madam, on that property? A. A year, I think.

Q. How much? A. One year.

588 Q. Is that all? A. And an assessment.

Q. How much was the assessment? A. The assessment was for $130, I think.

Q. In all, assessment and taxes, how much, about? A. I think it amounted to about $400.

Q. Were there any judgments besides on that property? A. Yes.

Q. How many judgments? A. Two.

Q. How much were they for? A. One was for $188, and that I paid to Mr. Gershel. That was

the $300 that I finally assigned. The $188 he added onto the twelve. He claimed he wasn't getting enough money. 589

Q. Any other judgments on the property? A. There was another judgment against my husband, and I also paid that.

Q. How much was that? A. I don't remember.

Q. Were the taxes and assessment and judgments paid by the first mortgagee, did he advance the money to you? A. The judgments?

Q. Yes. A. No.

Q. Did he pay the taxes and assessment? A. Taxes and assessment were paid. 590

Q. By the first mortgagee? A. I think so.

Mr. Scileppi: Yes.

Q. I show you this paper and ask you if that is the signature of your husband, if you know? A. Yes.

Q. He signed that? A. Yes.

Q. Was that at the time that Miss Kay came to your house? A. Yes.

Q. You will note that the date on that——

Mr. Serri: I offer it in evidence. 591

Mr. Scileppi: May I see it?

(Mr. Serri hands paper to Mr. Scileppi.)

Mr. Scileppi: No objection.

(Marked Defendant's Exhibit G in evidence.)

Mr. Scileppi: You will read it to the jury, Mr. Serri?

592 Mr. Serri: Just a moment.
(Mr. Serri reads Exhibit G to the jury.)

Q. You paid the $40 to Miss Kay?

Mr. Scileppi: What is the date of that agreement?

A. Yes.

Mr. Serri: April 6, 1934.

Q. You will note that the date on this agree-
593 ment is April 6th. Your application is in March. Are you sure that Miss Kay was present in March in your home, or wasn't it on April 6th when your husband signed that— A. I didn't say March. I said April.

Q. So Miss Kay was not in your home in March? A. It was the fourth month, in April.

Q. So your application is signed in March. Miss Kay wasn't there at that time, was she? A. The application was signed——

Q. In March. Look at the date, March 27th. A. I don't know about the date, but I know she was here when this was signed.

594 Q. You are sure of that? A. Positive.

Re-direct examination by Mr. Scileppi:

Q. And that is when you gave her the $40? A. Yes.

Q. That is when this receipt was made which has been introduced as Defendant's Exhibit—that is when this receipt was made, is that correct? A. Yes.

Re-cross examination by Mr. Serri: 595

Q. And the receipt is April 6, 1934? A. Yes.
Q. And the application is March 27, 1934? A. Well,——

Mr. Scileppi: The application speaks for itself. There is no significance in that.
Mr. Serri: I am asking a question.

Q. Was Miss Kay there on that date that you signed there? I am asking if she signed at that time? A. I don't know about the time, but Miss Kay was there when that was made. 596
Q. On what date did you draw the money from the bank? A. On the same day, April 6th.
Q. Not on April 27, 1934? A. No.

Re-direct examination by Mr. Scileppi:

Q. Can you tell me whether or not your husband operates a typewriter? A. No.

Mr. Serri: That is conceded by the defendant.
Mr. Scileppi: I will offer it in evidence.
The Court: You wouldn't know whether her husband operates a typewriter? 597
Mr. Serri: No, but I am conceding that was written by the defendant.

(Marked Government's Exhibit 30 in evidence.)

(Mr. Scileppi reads Government's Exhibit 30 to the jury.)
The Court: What was enclosed?

598 Mr. Scileppi: Well, take it for whatever it is worth. We will assume there can be only one thing enclosed, and that was the application.

Mr. Serri: No. Now, I move to strike that out. Assume nothing of the kind.

The Court: We will not assume that. There was something enclosed. That was written by the defendant, concededly.

Mr. Scileppi: Right.

The Court: And something was enclosed in it, and you do not know what?

599 Mr. Serri: Yes, it is a letter in the file, the same as heretofore, and on a machine.

Q. You say that Miss Kay did not effect any saving for you on the second mortgage? A. No.

Q. How much did you eventually have to pay on the second mortgage? A. I don't remember exactly how much it was, but I do know I had to give an additional $300 after the closing of the loan.

Q. And you made an assignment of rents for it? A. Yes.

Q. And that you gave to the second mortgagee?

600 The Court: In other words, the loan of the Government was not enough to clear up the liens, is that right?

The Witness: Well, that is what he claims. The loan was supposed to be closed for $8,000 and it closed——

The Court: Wait. You had better answer my question. You didn't have enough money to clean up the second mortgage, did you, after the Government made this loan?

The Witness: Right. 601

The Court: And you had to pay $300 out of your own pocket?

The Witness: Right.

Re-cross examination by Mr. Serri:

Q. Mrs. Redner, do you mean that there weren't substantial reductions made, taking all the encumbrances on your property, the first mortgage, the judgments, that there were not substantial reductions made? A. But Home Loan had nothing to do with the judgments and the judgments nothing with the Home Loan. It wasn't even 602 accounted in the loan.

Q. Didn't the judgments—didn't the Home Loan require you to remove the judgments before they would give you the loan? A. Yes, I did. For that I gave Miss Kay $78 too.

Q. To deal with the people who had the judgments, is that right?

Mr. Scileppi: Let us have the witness say. That is not fair, Mr. Serri.

Q. What was it for? A. $78 was, I don't know what you would call it, but in order that they 603 shouldn't, the lien should—like insurance.

Q. Should be cancelled? A. No, like an insurance to cover that, in order to make a loan. I cannot explain it.

Q. That money was used for that purpose? A. What purpose?

Q. I mean, whatever you gave the $78 for, it was used to clear off the— A. But the judgment

604 had nothing to do with the loan. That is not in the——

Q. No, Mrs. Redner. Let us get this clear. Before the Home Owner's Loan would grant the loan, they required first of all that you clear off your property? A. It was like a lien insurance.

Q. Didn't you clear off the judgments? A. No, I did not.

Q. What was done? Was there a certain sum of money put in escrow; in the event that the judgment creditor should sue the Home Loan, the Home Loan would have these $78 to pay it
605 with? A. No.

Q. Well, what was it? A. I cannot explain it to you. I have the receipt home, or I turned it in. I don't remember.

Q. Who has this $78? A. Who has it?

Q. Yes. A. I don't know. I gave it to Miss Kay. She claims she gave it to somebody else.

Q. Did that somebody else have a judgment or a lien on your property? A. No.

Q. She just handed $78 to somebody? A. It was like an assurance, she said, against anybody suing.

Q. Were the judgments, whatever judgments
606 there were on your property, were they cleared off? A. No.

Q. They still remained on the property? A. One was cleared.

Mr. Scileppi: You mean there was a lien on the property and the lien was bonded?

The Witness: I think that is what it was.

Mr. Scileppi: And that is what you gave the $78 for?

The Witness: Yes.

Q. You mean the lien was bonded and the $78 607
was paid for the bonding of the lien? A. Right.

Q. So that lien, so to speak, was cleared off? A. Yes.

Q. So——

Mr. Scileppi: I do not think that is the implication. It is not cleared off. The lien was against the property. There is no saving that way, if a debt is deferred.

Mr. Serri: All right. Well, granting $78 still remain——

Mr. Scileppi: The lien still remains. 608

Q. Now, how much was the first mortgage—in all, what do you say was the reduction on all your encumbrances? A. I don't think any.

Q. None at all? A. No.

Q. Well, for example, the first mortgagee said there was due him $7,885, and he received $7,585. That is a $300 saving right there, isn't it? If I owe you $7,885 and I give you in payment $7,585, I am giving you $300 less, isn't that true? That is a reduction, a saving of $300 there, isn't that true? A. I know if my first mortgage was $7,000 and the second mortgage $1,300, that is $8,300—— 609

Q. No, Madam.

Mr. Scileppi: Now, let us——

Mr. Serri: Please.

Q. Your first mortgage was not $7,000 at the time of the closing. Interest kept on running and accumulating. A. I didn't owe them any interest.

Q. You mean you paid interest right up to the

610 date of closing? A. All I owed them was $35, and up to the date of the closing there wasn't any payments due.

Q. Then the $7,000 was the principal of the mortgage? A. Right.

Q. Then there was interest accumulating, at the time of the closing, so the first mortgagee said according to the statement filed, "There is due me $7,885." A. Right.

Q. And he said, "I'll take $7,585," a saving of $300 there, isn't that true? A. Yes.

Q. By the way, you were served with fore-
611 closure papers in about May, 1934. A. Right.

Q. And do you know this——

Mr. Serri: Is it conceded, foreclosure of Brooklyn Savings Bank?

Q. And do you know this, Mrs. Redner, that out of the amount that the first mortgagee received, that he paid approximately $1,000 for taxes and assessments? A. $1,000?

Q. Or whatever was the amount of taxes that was paid by the first mortgagee. A. That was all in the $7,800.

612 Q. You mean they included the taxes in that? A. All in one.

Mr. Serri: Is it conceded, the foreclosure?

Mr. Scileppi: Yes, it is conceded. So we will have it clear, the concession is that foreclosure papers were served, and at the time of foreclosure there was $7,000 due on the first mortgage and $175 in interest.

The Court: $7,175 in May, 1934? That is the concession you are willing to make?

Mr. Scileppi: Yes, that is the demand in the foreclosure papers. We won't raise any technical objection. 613

Re-direct examination by Mr. Scileppi:

Q. You say at different times you kept right on paying interest, didn't you? A. Yes.

Q. To the bank? A. Yes.

Q. So in effect there was no saving made to you, you paid out your entire debt to the bank? A. I did.

Re-cross examination by Mr. Serri: 614

Q. But, Madam, you did not pay out the entire debt to the bank. At the closing there was due $7,885 to the bank, and you paid $7,585. Therefore you paid $300 less, isn't that true? A. I don't know how you figure it.

Q. The closing statement of the Home Owners' Loan Corporation——

The Court: We have gone as far as we can. The figures speak for themselves. You will get the same thing. She thinks she probably paid more than she owed. Maybe she did, I don't know. 615

(Witness excused.)

NELLIE R. WILSON, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mrs. Wilson, you are owner of premises 3104 Farragut Road, Brooklyn? A. Yes.

616 Q. How long have you resided there? A. Since the World's War.

Q. Are you married? A. Yes.

Q. And you have a family? A. Yes, two children.

Q. You know this defendant, Gertrude Kay, don't you? A. Yes.

Q. Under what name do you know her? A. Miss Kay.

Q. Did you ever know her under the name of Miss Klein? A. No. Rose Klein was the holder of the second mortgage.

617 Q. Who is Rose Klein? A. I never met the lady. It is supposed to be her mother.

Q. May I ask you, Mrs. Wilson, to please speak a little louder, so the Gentlemen of the Jury here may hear what you are talking about? How many mortgage transactions did you have with this defendant? A. One.

Q. All your transactions were conducted with Miss Kay, is that correct? A. Yes.

Q. Do you remember when that mortgage was put on record, when that mortgage was made? A. In September, I am pretty sure, of 1932.

Q. Supposing I show it to you. Would it re-
618 fresh your recollection? A. Yes.

Q. (Handing paper to the witness.) Do you remember now? A. Yes.

Q. When? A. 13th of September, 1932.

Q. Now were you to pay that mortgage off? A. Every month.

Q. How much? A. Well, $25 a month with interest on the $650.

Q. That was the total amount of the mortgage, $650? A. Yes.

Q. Did you pay off the mortgage at the rate of $25 a month? A. Every month. I never missed a month. 619

The Court: This is a second mortgage?

Mr. Scileppi: Yes, your Honor.

The Court: In the name of the defendant?

Mr. Scileppi: In the name of one Rose Klein, the mother of the defendant.

Q. Sometime in March, 1934, did Miss Klein come to your home,—Miss Kay? A. Miss Kay came every month to collect.

Q. Do you remember signing an agreement with Miss Kay? A. Yes,—— 620

Q. I withdraw that for the time being. Did you sign an application for a Home Loan? A. Yes, I did.

Q. Is this your signature? A. Yes, it is.

Q. Who made out that application? A. Miss Kay.

Q. Where?

The Court: What is the date?

Mr. Scileppi: The date is April 1, 1934, and I offer it in evidence. 621

A. In my house.

Mr. Serri: No objection.

(Marked Government's Exhibit 31 in evidence.)

Q. Do you remember ever seeing this paper before? A. Yes.

622 Q. Who made that out, that paper? Read it carefully and see. A. Miss Kay.

Q. When was that paper made out? A. March 29, 1934.

Q. That is two days before the application was signed, is that correct? A. Yes.

Q. Now, at the time that that paper was made out did you give Miss Kay any money? A. No, I did not.

Mr. Scileppi: I offer this paper in evidence.

Mr. Serri: No objection.

623

(Marked Government's Exhibit 32 in evidence.)

(Mr. Scileppi reads Exhibit 32 to the jury.)

Q. Did you understand that Miss Kay was going to defer the payment of taxes on your property? A. No.

The Court: Does the agreement say that?

Mr. Scileppi: That is what the agreement says.

624 The Court: Then it speaks for itself.

Mr. Scileppi: I will withdraw that question.

The Court: I would like that done too.

Q. In June, 1934, you owed Miss Kay $150 on that mortgage, did you not? A. Yes.

The Court: What was due on April 1st, when the application was made out?

Mr. Scileppi: It was made in June. 625

The Court: No, she said the application for the Home Loan was made out April 1st.

Mr. Scileppi: $200 due.

The Court: What was due on April 1st on that mortgage,—1934,—when that Home Loan application was made out, as you say, by the defendant Kay?

The Witness: I don't know. I paid her every month.

The Court: You were to pay $25 a month?

The Witness: Yes.

The Court: And in June it was $150? 626

The Witness: Yes.

The Court: So in April it was $200?

The Witness: Yes.

Mr. Scileppi: We are concerned with the June date, if your Honor please. June is the date alleged in the indictment, and the date of the mortgagee's consent——

Mr. Serri: There is no dispute, in April $200, in June $150. Undisputed. That is correct.

Mr. Scileppi: Is that your client's signature?

Mr. Serri: I think it is. 627

The Court: What does the Home Loan say was due?

Mr. Serri: $150, which is correct.

The Court: I mean the application.

Mr. Serri: One says $500, one says $650.

Mr. Scileppi: I offer in evidence mortgagee's consent to take bonds on the premises 3104 Farragut Road, signed by G. Kay.

Mr. Serri: No objection.

628 (Marked Government's Exhibit 33 in evidence.)

The Court: I want to get the amounts alleged.

Mr. Scileppi: $650 is the amount alleged.

The Court: In June.

Mr. Scileppi: In the mortgagee's consent, and the amount due at that time on the mortgage was $150. That is in the fifteenth count of the indictment.

629 Q. You said that you owed Miss Kay $150? A. Yes.

Q. At the time that you filed this application for $650 with the Home Loan, is that correct? A. Yes.

Q. Now, was there any discussion at that time between you and Miss Kay about increasing the amount? A. Well, Miss Kay said it would be cut down by the Home Owners' Loan when that came through; so maybe it would come, and then I could—if there was any money, if that did cover all, I could have some money to work on in the house.

630 Q. Was there any further discussion as to what she would get? A. Not about that money. The $40 she was to get for her services with the settling of the title guarantee, and I was to pay her when I could get it. I didn't have it at the time to give her.

Q. That is, you were to pay according to the terms of the contract? That was to be paid on or before June 1, 1934? A. Yes.

Q. Is that correct? A. Yes.

631 Q. Was anything said about Miss Kay working on the Home Loan application? A. Well, that all went in together. She would help me to get the loan.

Q. Did you write any letters to the Home Loan? A. No, I did not.

Mr. Serri: Conceded.

Mr. Scileppi: Conceded, and offered in evidence.

(Marked Government's Exhibit 34 in evidence.)

632 Q. Now, I show you three checks for payments— A. Yes.

Q. You made those? A. Yes.

Q. In connection with your mortgage? A. When I paid Miss Kay.

Mr. Scileppi: I offer them as an exhibit.

Mr. Serri: No objection.

(Marked Government's Exhibit 35 in evidence.)

633 Q. You finally paid off this bond and mortgage, did you, Mrs. Wilson? A. Yes, I did.

Q. Do you remember when? A. (No answer.)

Q. Do you remember when? A. In November.

Q. Was it in regular course? A. In regular course.

Q. As you kept on paying, you finally made the last payment, and then you got back the bond and mortgage? A. Yes.

634 Q. And after June all you paid was the $150? A. Yes, that is all.

(Mr. Scileppi reads Government's Exhibit 34 to the jury.)

Q. Did you ever send that letter? A. No, I did not.

Q. Did you know it was being sent? A. Yes, I did. Miss Kay said she was writing a letter.

(Mr. Scileppi reads Government's Exhibit 35 to the jury.)

635

Cross examination by Mr. Serri:

Q. Mrs. Wilson, when that first application was made out, Miss Kay was in your home? A. Yes.

Q. You weren't sure of the precise amounts, for example, you put down $240 interest on the first mortgage? You weren't sure that was the precise amount, were you? A. Yes, I was.

Q. It was $240 precisely? A. Well, I am—I didn't put it down. I could be sure because I paid every month without fail.

636 Q. This $240, wasn't that your best guess as to how much was due, but it might have been $140 or $175? A. No, I could not——

Q. You could not? A. I could not make a mistake, no.

Q. Of that size? A. No, I could not make a mistake because I never missed a payment from the time I had it.

Q. The tax item is $700. Were there $700 in

arrears at that time? A. Well, I don't know. I would have to have my taxes. Every year they were different. 637

Q. Don't you know that that is at least two or three hundred dollars out of the way? A. With the taxes?

Q. Yes. A. No, because my taxes were over $400 a year then.

Q. But they certainly were not precisely seven hundred, were they? A. I don't know. Miss Kay figured them up. I had my taxes right there on the table.

Q. Mrs. Wilson, they weren't precisely seven hundred, were they? It was a fair guess, but still it was a guess? A. Yes, but I couldn't—— 638

Q. I am not blaming you for not putting down $700.01 or anything. I am asking you, you made a fair guess as to what was due on the taxes? A. I had them right there on the table. We figured them out. I didn't, Miss Kay did.

Q. Did you figure them out exactly? A. Miss Kay did. I don't know whether she did or not.

Q. Was $700 the precise amount due? A. I could not say now.

Q. There might have been a difference of several hundred dollars there? A. Oh, no. 639

Q. Not that much? A. No.

Q. A hundred dollars? A. No, not even a hundred, I don't think.

Q. They put down $500 on the second mortgage. Of course, there wasn't due $500, was there? A. No.

Q. And that was simply a rough guess at the time by Miss Kay? A. Yes.

Q. She put down $500. Then on the consent

640 she put down $650. $650 was the original amount of your mortgage? A. Yes.

Q. Did she tell you she put down $650 because she did not know the precise amount? She knew, of course, what the original mortgage had been, $650? Didn't she tell you, "We will figure it out at the end, and everything which is coming to me, you will pay me"? A. No, she said if there is any over I could have it for the house.

Q. In other words, all she wanted from you was the $150, or whatever might be due at the time of the closing? A. Yes.

641 Q. And that is all you ever paid her? A. Yes.

Re-direct examination by Mr. Scileppi:

Q. Now, there really wasn't any confusion when that mortgagee's consent was raised from what was actually due, $150 to $650, was there, Mrs. Wilson? A. No.

Q. She was not guessing, was she? A. No, she was not guessing.

Q. Neither were you? A. No.

Q. Neither one of you were guessing? A. No, because I said to Miss Kay, "Well, there isn't any

642 way that we can make a mistake, because I have never missed a payment with you." She said, "No, indeed, you haven't."

Q. She couldn't make a mistake of $500 when there was only a balance of $150? A. No.

Q. Nor could you? A. No.

Q. And the checks which you sent in, on the backs of these checks you used to put down the balance due? A. When it came near the end, I did. Not before. But when it came near the

$200, I started putting on the backs of the checks what I owed her because any time I asked, "What is the balance?" she would say, "I haven't it with me, I cannot figure it," so I thought I would figure it for myself. 643

Q. That is, she would be confused that way? A. Yes.

Q. Now, then, I want you to recollect a moment, Mrs. Wilson, was there some discussion between you and this defendant as to why that mortgagee's consent was increased? Did you call it to her attention or did she call it to your attention? A. She said, "We will put down $500." 644

Q. Did you object at that time? A. No, I did not. I said, "Well, who gets the money?" She said, "I'll get the money. You will have to make the checks payable to me, and it will take maybe six months, maybe longer, but I will give you whatever is left."

Q. And then there was something said about, "You can have a couple of dollars to put in the house"? A. To fix the house up with.

Q. To do some nice things around the house? A. Yes.

Q. And then the application went in for $650? A. Yes. 645

Mr. Serri: No, pardon me. The application is for $500. The mortgagee's consent is $650.

Q. But you knew that was the wrong figure? A. Yes, I did.

Q. And she knew? A. Yes, because we had an argument about it, and she said that would be all right, we would straighten it up later.

646 Re-cross examination by Mr. Serri:

Q. But, Mrs. Wilson, she was to get only what was actually due? A. Yes.

Q. You were not to pay one penny more than the $150? A. No.

Q. And that is all you have paid? A. Yes.

Re-direct examination by Mr. Scileppi:

Q. Now, Mrs. Wilson, according to this mortgagee's consent, whatever money was paid on that mortgage would go to her, wouldn't it? A. Yes.

647 Q. And then— A. She would——

Q. Then she would—it would be up to her to give you what she wanted to, wouldn't it? A. Yes.

Re-cross examination by Mr. Serri:

Q. "But, Mrs. Wilson," she said, "you are to pay me out of that only my $150"? A. She would take what belonged to her.

Q. And that is all, and the balance to you? A. Yes.

648 Re-direct examination by Mr. Scileppi:

Q. She never seemed to know what belonged to her, did she?

Mr. Serri: I object to it.

Mr. Scileppi: All right; that is all.

The Court: We have all we need.

(Witness excused.)

SAUL B. BRADIE, called as a witness on behalf of the United States, having been duly sworn, 649
testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Bradie, you are an attorney and counselor-at-law? A. I am.

Q. And admitted to practice your profession in this State? A. I am.

Q. You were a closer for the Home Owner's Loan Corporation, weren't you? A. That is right.

Q. About how many loans did you close, Mr. Bradie? A. Exactly 403.

Q. Amongst the number of loans which you 650
closed, you did close a loan known as Beyers? A. That is right.

Q. Did that close? A. Yes, it did.

Q. That did close? A. Yes, it did.

Q. You were not the first closing attorney in the loan, were you? A. No, I was not.

Q. Do you know who had the file before you? A. I believe Roy Rudd had it twice before I got it.

Q. And then finally the loan was given to you to close? A. That is right.

Q. Now, in all of these loans that you closed, 651
will you please tell us what you did, what was your course of conduct as an attorney for the Home Owners' Loan Corporation?

The Court: What were your duties?

The Witness: Our duties principally consisted first of all of contacting the mortgagees or other lien holders on the property and getting statements from them and following

652 that up by a consent and a form provided by the Home Owners' Loan to determine the amount due them for principal and interest on their liens. The next step, of course, was to try to fit the amount they claimed to be due in the amount that the Corporation was willing to lend, which was customarily 80 per cent. of their appraised value.

In cases where there was insufficient moneys to cover the 80 per cent. value, why, the closing attorney had the duty of communicating with the parties and obtaining re-
653 ductions.

Q. And you did that? A. Oh, yes, I should say in 80 per cent. of the cases I closed it was essential to obtain reductions before the loans could close.

Q. Considering the total number of loans which you closed, on which you negotiated with the various lien holders, how much do you estimate that you saved the Home Owners?

Mr. Serri: I object to this as entirely immaterial.

654 The Court: Sustained.

You have the duties. Now let us see what he did here.

Q. You say in about 80 per cent. of the cases in which you closed loans it was necessary to negotiate with the various lien holders, mortgagees and others to accept a lesser amount than the face value of their claims? A. That is right.

Q. And those were your duties? A. Yes.

Q. How much were you paid by the Home Owners' Loan Corporation for closing a loan? A. Originally we started at $10—— 655

Mr. Serri: I object to that as immaterial.
The Court: Overruled.
Mr. Serri: Exception.

A. (Continuing.)—if we closed in the offices of an institution, such as a title company, and $15 if we closed in our own office; and afterwards increased to $17.50.

The Court: In other words, you got $17.50, or whatever amount you just said, if you closed? 656
The Witness: Yes.
The Court: If you did not close, you got nothing?
The Witness: That is right.

Q. So it was to your advantage to negotiate these matters? A. Yes.

Q. With respect to the Beyer matter, do you remember Mrs. Beyer? A. Why, I believe I would remember her if I saw her. She was at my office several times. 657

Q. On how many occasions did people come to your office in this Beyer matter to close? A. Well, the actual closing, they came to my office on one occasion, but Mrs. Beyer called at my office several times prior to the time it was set for closing.

Q. Do you remember who was present on the occasion when you closed? A. May I look at the papers?

658 The Court: Yes, you may refresh your recollection, but don't read.

A. Mr. and Mrs. Beyer were there, Mr. Rabino, who represented the first mortgagee, and Mr. Tompkins, from my office, an associate of mine, Miss Kay was present, and a Mrs. Bowie, who held the second mortgage, and her mother, were present, and of course I was there.

Q. And you finally closed the loan? A. That is right.

659 Cross examination by Mr. Serri:

Q. Mr. Bradie, of course, while you closed the loan, you don't know what efforts Miss Kay, for example, may or may not have put forth in getting reductions on certain of these mortgages? A. I believe I do know.

Q. You know the efforts that she made? A. I believe I do.

Q. You know the number of times she negotiated with the first or second mortgagee? A. I don't know that she negotiated at all with the first and second mortgagees.

660 Q. Then you don't know what efforts she put out. I am asking you if you know what efforts, if any, she put out in obtaining reductions on the first and second mortgages in the matter? A. I say, I don't believe she put out any effort.

Q. Did I ask you that? You are an attorney. I am asking you a simple question as to your knowledge. Do you know— A. My answer is, no.

Q. Now, isn't it also a common practice on the part of the Home Owners' Loan to write the owner

a letter something in this form: "We are granting you a loan of $8,000. The encumbrances on your property are ten. Just as soon as you arrange to bring your encumbrances within our loan, we will proceed to close"? A. No, that is not the common practice. 661

Q. I mean, didn't the Home Owners' Loan repeatedly send out such letters? A. They did not.

Q. None? A. None whatsoever.

Q. You mean, Mr. Bradie, that perhaps you may not have seen such letters? A. I believe I have seen them all. I have been with them over two years. 662

Q. And you never saw a letter somewhat in the form which I have just stated? A. No, never; not in the form that you stated.

Q. Now, just look at this letter and then see if that would refresh your recollection that the Home Owners' Loan did send out some such letter? A. Why, yes, that would change my——

Q. So that would indicate that they did send out letters that way to the owners? A. That is right.

Mr. Serri: That is all.

663

Re-direct examination by Mr. Scileppi:

Q. You did not operate from the offices of the Home Owners' Loan Corporation, did you? A. No, from my own office.

Q. You have your own private office? A. Yes.

Q. An established attorney? A. That is right.

Q. And you closed most of your loans in your own office? A. All except about forty, which I

664 closed at the offices of the Home Title in Brooklyn.

Q. But you did not go to the Home Owners' Loan Corporation, New York, and see what they sent out, or what they did not send out? A. No, absolutely not.

Q. Nor did you peek into the offices of other closing attorneys to see what they did? A. No.

Mr. Serri: Now, I object to that.

The Court: Let me ask you something: How were you appointed? Were you sworn in or something by the Government?

665 The Witness: Yes, I filed an application to act as closing attorney and had to go through the regular routine of being approved by Washington and then I was not sworn in, but I received a card.

The Court: You got an appointment?

The Witness: Yes, an appointment signed by Mr. Corsi.

The Court: Were there any written rules for you to go by?

The Witness: Well, from time to time they would submit mimeographed memoranda

666 to us and we would have to follow those instructions.

The Court: Did you ever get written instructions from the Home Loan to try to get reductions on these things when they did not come up to the loan?

The Witness: I don't know whether we got any written instructions.

The Court: Did you get verbal instructions?

The Witness: We certainly got verbal instructions to that effect when we were appointed. 667

(Witness excused.)

The Court: We will take a recess until tomorrow morning at ten-thirty, Gentlemen.

Gentlemen, do not discuss the case over night, please.

Recess to May 15, 1936, at 10:30 A. M.

Brooklyn, N. Y., May 15, 1936.

(Met pursuant to recess at 10:30 A. M.; present as before.) 668

JENNIE BEYER, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mrs. Beyer, you live at 574 East 42nd Street, Brooklyn, New York, do you not? A. Yes, sir.

Q. You own that house? A. Yes, sir.

Q. Sometime in August of 1933 did you make an application for a Home Loan? A. Yes, sir, I did. 669

Q. May I please ask you to look at this paper and tell me whether or not you recognize it? A. Yes, sir.

Q. Is that the application you made? A. That is the application I filed.

Mr. Scileppi: I offer it in evidence.

670 The Court: What is the date of that?

Mr. Scileppi: August 7th.

The Witness: Beginning of August. I forget the date.

The Court: 1934?

The Witness: No.

Mr. Scileppi: 1933.

(Marked Government's Exhibit 36 in evidence.)

Q. Did you make that application out yourself? A. My husband filled it out in my presence. I
671 was there when he filled it out.

Q. And you filed it? A. Yes.

Q. Do you know the defendant, Gertrude Kay? A. Yes, sir.

Q. Do you also know her as Gertrude Klein? A. No, sir, I did not.

Q. You only know her as Miss Kay? A. Miss Kay, yes.

Q. Did she have a mortgage on your home? A. Yes, she had a third mortgage on my home.

Q. When was that mortgage originally placed on your home? A. 1931.

672 Q. Did you pay off the original mortgage? A. Well, I paid off up to eighty dollars.

Q. And then what happened? A. And then I borrowed $200 more off her.

Q. Yes? A. And then I paid that off to about $80, and I borrowed $200 more.

Q. A new mortgage was made on each occasion? A. Yes.

Q. Do you remember the date that you borrowed the last sum of money from Miss Kay? A.

Excuse me. I said $200. The last one was only $78 I borrowed. 673

Q. $78? A. Yes, the last time.

Q. On July 28, 1934, did you see Miss Kay? A. 1934?

Q. Yes. A. Yes, I seen her—I do not understand what you say.

Q. I withdraw that. Sometime after you filed your application for the Home Loan, did Miss Kay speak to you with reference to it? A. Yes, about four or five months after I filed the application she came to me and asked me why I didn't give it to her to get for me because she could get it quick, she had more experience than I did. I said I didn't like to do that because I didn't want to go contrary to the Home Loan rules; I wanted to leave it alone as the Home Loan had it. 674

So she said I was very foolish, that I should give it to her to get it for me; she could get a reduction on the first mortgage and the second mortgage; she would go and see those people, see, and get a reduction, and I would get 50 per cent. and she would get 50 per cent.

I wouldn't do it; I wouldn't do it. I kept putting her off and putting her off, and she used to come to the house and say, why didn't I give it to her? I kept stalling her off. I didn't want to do it. I had it in the hands of the Home Loan, so I didn't want to give it to her. 675

Anyhow, she got very angry at me, so I went over to the Home Loan and I told them what the proposition was, and they said they would send a man over and the man would be there, see.

Well, first I told Miss Kay I could not do

676 that because my husband would have to hear her proposition also, because his name was on the house, see, our both names are on the house, and he would have to hear the proposition. So—may I have a little water, please? So—well, anyhow——

Q. You can wait, Mrs. Beyer. A. All right, thank you.

(Bailiff hands the witness a glass of water.)

A. Shall I continue now?

Q. Now, then, you were telling us about the
677 conversation you had had with Miss Kay with respect to her rendering service on your behalf. A. Yes. Well, I told her I would not sign the paper because my husband's name was on the house and it would be necessary for her to come and tell my husband about it too.

So she said she would come and see my husband. So she came. Well, in the meantime, I went over to the Home Loan, told them about it, and they said they would send a man, at the time she would come, to see what her proposition was. So when she came, that day there was
678 a man from the Home Loan in my house.

Q. Do you see that man in court? A. Yes.

Q. Will you please point him out? A. Mr. Fletcher there (indicating).

Mr. Scileppi: Indicating William B. Fletcher.

A. (Continuing.) So he heard and I heard and my husband heard also what proposition she had,

see, and I had—I asked Mr. Fletcher before, would I sign the paper, and to give me some indication. So I introduced him to Miss Kay and I asked him would I sign it and he said yes, that it was all right, that I should go ahead and sign it. 679

Then Miss Kay says—well, before that she wasn't going to charge me anything, but she got very angry because I wouldn't give it to her in the beginning, I suppose, and she said she was going to charge me $250 now, and I would have to pay her $10 a month.

Of course, I had already signed the paper and I let it go at that. 680

Q. When did she tell you about the $250, before or after you signed the paper for her? A. Well, she wrote it down on the paper, she wrote it on the paper and said I would have to sign it. She wrote that all out. She had the paper all written out and then we signed it, my husband and I both signed.

Q. Well, now, may I please ask you to look at this paper and tell me whether or not you have ever seen it before? A. I don't think that was the paper that was filled out in my house because she had on it the $250 and there is no $250 on this. 681

Q. Did she leave a copy of the paper there? A. Yes.

Q. She did? A. Yes.

Q. What did you do with that paper? A. I gave that to the Home Loan, to Mr. Fletcher. Mr. Fletcher took it.

Q. You remember distinctly, though, at the time she was negotiating with you with respect to

682 what services she was rendering, that she was going to get $250 in addition to the 50 per cent. that she could save? A. Yes.

Mr. Serri: I object as leading and absolutely prejudicial, putting in the mouth of the witness something to the contrary of what she has testified. She says she wrote out the paper. It included everything. That is prejudicial.

Mr. Scileppi: I will withdraw that.

Q. Tell us what the $250 was for.

683

Mr. Scileppi: She has testified to the effect of what I said.

The Court: He withdraws the question.

Mr. Serri: But it is prejudicial.

The Court: Gentlemen of the jury, you are the sole judges of whatever facts come from the witnesses, irrespective of what I say or the lawyers say. It is your recollection of the facts that controls, and when these questions come up on evidence, and at the end, you judge the evidence as you have heard it and as you remember it, and if we can help you, all right, but if we cannot, you take your own recollection.

684

Q. Will you please tell us, Mrs. Beyer, what was said with respect to the $250 fee?

Mr. Serri: I object to that. That is the question which again is putting in her mouth a matter——

The Court: I will overrule your objection. 685

Mr. Serri: Exception.

A. She had been asking me so often to get the Home Loan, to let her get it, and I always refused, and she came to my house three or four times, I then——

Mr. Serri: I object. She is repeating this. We know all about it.

The Court: Yes. Mrs. Beyer, what did she tell you the $250 was for?

The Witness: She told me that she got, you know—now that I didn't give it to her in the beginning, she was going to charge me $250 for getting it for me. 686

The Court: For getting what?

The Witness: For getting the Home Loan.

The Court: For getting the Home Loan?

The Witness: Yes.

Q. And in addition were you to pay her 50 per cent. of whatever she could save you?

Mr. Serri: I object to that. Again the same—— 687

The Court: That is leading. That is ruled out.

Mr. Scileppi: Exception.

The Court: Suppose I get it. Mrs. Beyer, you say that she told you that she was charging you $250 for getting the Home Loan?

The Witness: Yes, sir.

The Court: Was there any other conversa-

688 tion with her at any other time with respect to payment of any other moneys?

The Witness: In the beginning she said—at that time?

The Court: No, answer the question.

The Witness: No.

The Court: For getting that Home Loan, $250 fee, for a moment——

The Witness: Yes.

The Court (continuing): —that you testified about. Was there any other conversation at any other time with respect to any other moneys that you were to pay

689 The Witness: Yes, she said I was to give her 50 per cent. if she got a reduction in the first mortgage and second mortgage. I told her——

The Court: Wait. She told you that you were to give her 50 per cent.?

The Witness: Yes.

The Court: Of any reduction made in the first and second mortgages?

The Witness: In the first and second mortgages, yes, sir.

The Court: Was that outside of the $250

690 for the Home Loan?

The Witness: She told me that in the beginning, yes, sir, and then after she told me it was $250.

Q. You say that she left a copy of the paper which you signed for her, is that correct? A. Yes.

Q. May I please ask you to look at this and tell me whether or not this is a copy of the paper

that she left with you? A. Well, I don't know. 691
This don't say anything about the $250, and she positively wrote the $250 on, and how I was to pay it.

Q. Were two papers made out at that time? A. She made one out for herself and one out for me.

Q. Right. And the paper that was made out for you, what did you do with it? A. I gave it to Mr. Fletcher.

Q. The same day? A. The same day he took it, yes, sir.

Q. Do you remember Mr. Roy Rudd? A. Yes, 692
sir.

Mr. Scileppi: May I have this marked for identification at this time, if your Honor please?

(Marked Government's Exhibit 37 for Identification.)

Q. After you signed this paper for the defendant did you come in contact with anybody from the Home Loan? A. I beg your pardon? I did not understand what you said.

Q. Did anybody from the Home Loan contact 693
you?

The Court: See you?

A. Yes, Mr. Fletcher came to see me—in regard to the Home Loan, you mean?

Q. Yes. A. Well, I immediately went over to the Home Loan myself, I always went over myself, I never wrote letters, I always went there myself.

694 Q. Do you know a Mr. Rudd, a Mr. Roy Rudd? A. Yes, sir.

Mr. Scileppi: Mr. Rudd, please.

(A man stands up in the court room.)

Q. This gentleman? A. Yes, sir, I know Mr. Rudd.

Q. Who is he? A. He was the closing attorney that was appointed first, and then it was taken out of his hands and given to Mr. Bradie, I think, or Mr. Brader.

695 Q. How many times did you go to Mr. Rudd's office? A. I should say four or five times.

Q. That was for the purpose of closing the Home Loan on your home? A. Yes, sir.

Q. Did it close in the hands of Mr. Rudd? A. No, sir.

Q. After Mr. Rudd—after you had gone to Mr. Rudd's office, to whose office did you go? A. What lawyer's office?

Q. Yes.

The Court: She said Mr. Bradie.

696 A. Mr. Bradie.

Q. And Mr. Bradie finally closed your loan? A. Yes, sir.

Q. Will you tell us why your loan could not close while it was in the hands of Mr. Rudd?

Mr. Serri: I object to it as immaterial.

The Court: Are you going to call Mr. Rudd?

Mr. Scileppi: Let us get it from her.

The Court: No, I think that is material.

Q. Now, tell us what occurred on the occasions when you went to Mr. Rudd's office to close the loan and he was present. A. It was taking so long—— 697

Mr. Serri: I object to that.

The Court: I am going to rule that out.

Mr. Serri: But I mean the general line of questioning, I am objecting to. There is no particular issue as to why a loan closed or did not close.

The Court: It may be very important.

Mr. Serri: No, the question is, did we have a legal right to make this contract; whether we succeeded in performing 5 per cent. or 50 per cent., or any other per cent. of the contract is immaterial. The whole issue is, did we have a legal right to make a contract? If we did, it doesn't make any difference whether the loan closed or it did not. 698

The Court: Supposing I say to the jury she had not any right? Then this is material.

Mr. Serri: No, if you rule we have no right, then we have committed a crime; if you rule we did have the right, we have committed no crime.

The Court: I am going to take the evidence. 699

Mr. Serri: Exception.

The Court: Go ahead.

Q. Do you remember what occurred at Mr. Rudd's office on the occasion when you went there to close your loan, if Miss Kay was present? A. She was never present when I went to Mr. Rudd's office.

700 Q. She was never present? A. No.

Q. And that you remember distinctly? A. Yes.

Q. Do you know whether Miss Kay ever went to Mr. Rudd's office? A. Yes.

Mr. Serri: I object to that. That is absolutely immaterial.

The Court: The answer, yes, doesn't harm you. She says yes.

Mr. Serri: But why this immaterial stuff, Judge?

The Court: Suppose you let me worry about that. You are making your record.

701

Q. Did Miss Kay tell you that she had gone? A. No, Miss Kay did not tell me. Mr. Rudd.

Q. Well, all right,——

The Court: That is out. Ruled out.

Mr. Scileppi: I will withdraw that.

The Witness: Yes.

Q. Do you know in whose name this mortgage was; the third mortgage that was on your property, in whose name was it? A. It was in Edna Gregor.

702 Q. May I ask you to please look at these and tell me whether you recognize them?

The Court: Mr. Scileppi, she said she never wrote any letters to the Home Loan or any other place. You have got the answer on that.

A. Yes.

Mr. Serri: Admit any letters were written by the defendant. 703

A. (Continuing.) These are receipts Miss Kay gave me for the payments.

Q. Were they signed in your presence? A. Yes.

Q. And she signed Edna Gregor's name to them? A. Yes.

Mr. Scileppi: I offer them in evidence.

Mr. Serri: I object to their introduction, not because we did not sign them, but because they are not relevant to any issue. There is no issue here about the third mortgage which we had on this property. We did have the mortgage. We eventually took a loss on it. There is no issue as to the accuracy or inaccuracy of any of the amounts. 704

The Court: I do not know that yet.

Mr. Serri: I think Mr. Scileppi will admit that. The indictment does not make mention of any amount as to that mortgage.

The Court: What is the purpose of the receipt?

Mr. Scileppi: The purpose of the receipt is to definitely establish the method of doing business by this defendant and the fact that she was signing Edna Gregor's name. 705

The Court: Haven't we that already?

Mr. Serri: We have admitted that, that certain mortgages were in the name of Edna Gregor.

Mr. Scileppi: It is just a little more, so what is the difference?

706 Mr. Serri: No, I object to it.

The Court: I do not think there is any dispute as to that. You have got it in the opening of counsel that she dealt in her mother's name and her sister's name.

Mr. Serri: Correct.

The Court: The sister admitted she dealt in her name and that these mortgages, while they were in the names of the mother and the sister, as I understand it, they were in fact the defendant's mortgages.

Mr. Serri: They were.

707 Mr. Scileppi: And all the papers were filed by the defendant.

The Court: Yes.

Mr. Scileppi: Do you concede that?

Mr. Serri: Yes.

Mr. Scileppi: Very well, then, I will withdraw these two exhibits.

The Court: As a matter of fact, that girl, when you asked her if she was a dummy, said, "Well, yes."

Cross examination by Mr. Serri:

708 Q. Mrs. Beyer, you said at the beginning that you didn't want to have—turn over the matter to Miss Kay because you thought it was contrary to the Home Owners' Loan regulations, is that correct? A. Yes, sir.

Q. You mean to tell this Court that you felt it was illegal for Miss Kay— A. No, I think when I had it in the hands of the Home Loan, why should I give it to somebody else?

Q. But who told you to say it was contrary

to the Home Owners' Loan Corporation regulations? A. That is my own idea. 709

Q. You had never read the regulations, had you? A. No, never.

Q. You have never read the law in this matter? A. No, but that is my idea.

Q. Did any agent, while talking to you, say to you, "This is not lawful"? A. No, no, sir, they did not. Nobody ever told me anything. I have a mind of my own.

Q. Madam, I didn't ask you whether you had a mind of your own or not. Of course you had. I asked you did the agent tell you this is contrary to the Home Owners' Loan Act? A. No, sir, nobody ever told me anything like that. 710

Q. That was simply a guess of yours? A. Sure.

Q. You guessed that it was contrary to the Home Owners' Loan Act for Miss Kay to go to a first mortgagee and get you a reduction? A. Well, I didn't want to give it to her, that is all. I simply did not want to give it to her. It was in the hands of the Home Loan. Why should I pay somebody when I don't have to pay?

Q. But why did you say because it was contrary to the Home Owners' Loan regulations? A. Well, contrary; that is just a word, maybe. Why keep harping on the one word in the English language? I do not see—— 711

The Court: She has been sitting around here for two days, you know. They form opinions while sitting in the court room too, you know.

Mr. Serri: That may be, Judge. On the

712 other hand, it may have been implanted in her mind. That is what I am trying to get at.

Q. Did the agent say that it was contrary to the Home Owners' regulations? A. No, sir, nobody ever told me anything was contrary or anything else, nobody.

Q. Did he tell you to say that when you took the stand, did he? A. No, sir, I didn't talk to anybody. I know what I have to say, and I say the truth and nothing but the truth.

Q. You have not talked with any agent of the Government? A. No, no, sir, not since I have
713 come here, no, sir,—before I have——

Q. What is that? A. I haven't talked to anybody.

The Court: She said, not since she came here.

Q. Not since you came here but before, how many times did you talk to Mr. Fletcher? A. I have not talked to Mr. Fletcher since the day Miss Kay signed the paper.

Q. How many times in all have you talked to
714 Mr. Fletcher? A. I couldn't say. About five or six times, I guess.

Q. How many times did he come to your home? A. He was only in my home twice.

Q. And then you visited him at the Home Owners' Loan Corporation? A. Not him particularly, no. I went to the Home Owners' Loan to see about my mortgage, what was delaying it.

Q. Did you talk with him there? A. Not all

the time. No, I talked to other officials of the 715
Home Loan.

Q. I am asking you, did you talk with Mr. Fletcher a number of times there? A. No, I don't believe I ever talked to him.

Q. Not— A. In the Home Loan, not to my knowledge. I didn't talk to him at all.

Q. You talked to him only the two times at your own home? A. Yes, sir. I talked with the other officials, the people I had business with, that I went to see about what was delaying my loan, I had my application in for my loan for a year and five months. Everybody else 716
was getting theirs, and I was not getting mine. I used to go to the Home Loan to find out why I did not get it. I went to the Home Loan to see what was delaying it. That is why. I take care of my own business—always did.

Q. Weren't you told that one of the reasons for the delay was that the amount of your mortgages were too much? A. Yes.

Q. They told you that? A. Yes.

Q. And then you went to Miss Kay to have Miss Kay go to the first mortgagee and the second mortgagee to get reductions? A. No, I did not.

Q. You did not ask her to do that? A. No, sir, 717
I did not.

Q. Now, the first mortgagee would write you letters, and wouldn't you go with those letters to Miss Kay? A. The first mortgagee, I only got one letter, I think—not from the first mortgage people.

Q. You did not get any letters from the first mortgagee? A. From the Home Loan people, saying that that mortgage, what they would allow me, was too much.

718 Q. After you got that letter saying that your mortgages were too much, that they would allow you only so much, did you go to Miss Kay? A. No, I went—I got this letter.

Q. Please answer the question, Madam. A. No.

Q. After you got that letter did you go to Miss Kay? A. I showed her the letter.

Q. Yes, you showed her the letter by going to her and talking to her? A. Yes, I showed her the letter and she said she would go and see Mr. Rabino—that is the name?

719 Q. Mr. Rabino is who? A. A lawyer for the first mortgagee.

Q. Right; and do you know— A. To see if she could get a reduction and——

Q. Yes, and do you know how many times Miss Kay had to go to Mr. Rabino, the lawyer for the first mortgagee? A. She went two or three times, but I did not ask her to go. She went on her own —she went on her own account.

Q. Of her own accord? A. Yes.

Q. You told her, "Here is a letter, we cannot grant you the loan unless your mortgages are reduced," but you did not ask her to do anything

720 for you? She simply started business, going there just the same? A. Yes, they told me in the Home Loan office if I would go and see my first mortgage people and the second mortgage and the third mortgage, and get a reduction——

Q. Yes, the Home Owners' Loan told you, "Mrs. Beyer, we cannot grant you," let us say, "more than eight thousand dollars; your encumbrances are $10,000"? A. Yes.

Q. "You must get a couple of thousand dollars reduction"? A. Yes.

Q. And then you go to Miss Kay and Miss Kay— A. I—— 721

Q. Without any request on your part, you did not say, "Miss Kay, do this"? A. No.

Q. Or "do the other thing"? A. No.

Q. You simply told her and then she went, but you didn't ask her? A. I went to see Mr. Rabino myself and he would not make a reduction. He said he would make a reduction if the second mortgagee would come down and the third mortgagee, but the——

Q. She——

Mr. Scileppi: Let us have the rest of the answer. 722

A. (Continuing.) I went to see Mr. Rabino. He said if the second mortgagee would take a reduction, he would take a reduction, and if the third mortgagee would. I went to the second mortgagee, a woman, a very nice person, and she said she would take a reduction. I went to Miss Kay and I asked her and she said she would not take a reduction, she would not take five cents.

Well, then, I went back to Mr. Rabino and I told him what Miss Kay said. 723

I went over to Miss Kay and I asked her again, wouldn't she please take a reduction, as the others would, and she said she would not.

She went to see Mr. Rabino. She said she would get a reduction off Mr. Rabino—she would get it. Well, she did not, she did not get no reduction off of Mr. Rabino,

Q. She got no reduction on the first mortgage? A. No, not a cent.

724 Q. No reduction on the second mortgage? A. No, not a cent.

Q. But as a matter of fact, there was a reduction on the first mortgage? A. Yes, but——

Q. And a reduction on the second? A. Yes, but she did not——

Q. Please answer my questions. I am not asking you who did it. I am asking you, was there?

Mr. Scileppi: I submit the question to the witness is entirely too argumentative.

Mr. Serri: No argument. I am asking a question of fact.

725 Was there a reduction?

The Court: If you would ask them slower, Mr. Serri, and give her a chance. She is going to answer her way anyway.

Mr. Serri: That is evident.

Q. Was there a reduction on the first mortgage? A. Yes.

Q. Was there a reduction on the second mortgage? A. Yes.

Q. And did Miss Kay go to the first mortgagee and the second mortgagee? A. She went to the
726 first mortgagee, but I don't know whether she went to the second mortgagee.

Q. And finally did she agree to a reduction on her own third mortgage? A. Not until the day we were closing.

Q. Now, please. A. No.

Q. Did she finally, the word finally, did she finally— A. No.

Q. (Continuing.) —agree to a reduction even of her own third mortgage? A. The day we were

closing I think she did. I don't know. I don't remember. 727

Q. Now, Mrs. Beyer, don't you know that she did? A. She may have taken $30 or $40, or something like that. I don't know what she took. I don't really know.

Q. You don't know that there was— A. No.

Q. (Continuing.) —a substantial reduction of her own third mortgage? A. I don't know, really, I couldn't tell you.

Q. Now, Mrs. Beyer, let us be fair here. You know she took a reduction, don't you? A. Yes, after hard—— .

Q. Did I ask you after how many requests? I asked you, you know she took a reduction, don't you? A. I don't know how much, if she did. 728

Q. Did I ask you how much? I asked you, you know she took a reduction, don't you? A. Yes.

The Court: She has conceded that.

Mr. Serri: No, Judge, she was squirming all around that.

The Court: She said she took a reduction.

The Witness: She took a reduction on the day of the closing, after Mr. Bradie talked her into it and put it in her hands. 729

The Court: Strike it out.

Q. Please, please——

The Court: You said she took a reduction?

The Witness: Yes.

The Court: On the closing?

The Witness: Yes, sir, yes, sir. I am sorry.

730 The Court: Do you know how much she took?

The Witness: I don't really know, Judge.

The Court: You know she took some reduction?

The Witness: I would have to see my papers to see. She took some.

Q. In substance, how much of a reduction was there on the first mortgage and the second mortgage too? A. Well, I know the second mortgagee, she took a reduction, I think, of $200. I owed her $400.

731 Q. On the first, roughly, the reduction? A. On the first I owed $4,000 and I had interest——

Q. Roughly, the reduction. A. About $400.

Q. About $400? A. $350, something like that.

Q. About $350 on the first, and a couple of hundred on the second? A. Yes.

Q. Madam, isn't it a fact that the first time that you got a letter from the first mortgagee threatening foreclosure, you yourself went to Miss Kay to ask her to see what she could do for you? A. No, sir, I did not.

Q. Isn't it a fact that every time you got a
732 letter from the first mortgagee you would go over to Miss Kay? A. No.

Q. And ask her to see what she could do with the first mortgagee? A. No, sir. The only time I ever went to Miss Kay, because I had already filed application——

Q. That we know. I mean after you filed your application? A. The only time I ever went over—

Q. After you filed your application didn't you get a number of letters from the first mortgagee? A. No, I don't remember any letters.

Q. None at all? A. Well, of course, I might 733
have got them before the Home Loan came in.

Q. No, no, after you filed your application.

Mr. Scileppi: I submit the witness should be permitted to answer. She is trying to give us her best recollection.

The Court: Mr. Serri, I think your questions are going too fast. She cannot keep up with them. If you would slow them up, I think you would be all right.

Q. After you filed the application, didn't you— 734
you were in arrears, weren't you, on the first mortgage? A. Yes.

Q. And you were in arrears on your taxes? A. Yes, sir.

Q. And the first mortgagee was telling you, threatening to foreclose because you were in arrears on your taxes? A. Yes.

Q. And because you were in arrears on your interest? A. Yes.

Q. And they let you know that, didn't they? A. Yes.

Q. And they would write you letters to that effect? A. Sure, yes.

735

Q. Naturally, when you got those letters you were worried a bit, weren't you? A That is why I applied for the Home Loan.

Q. I am speaking about after you filed your application. After you filed your application didn't the first mortgagee tell you, "Mrs. Beyer, you are still in arrears on your taxes"? A. Maybe; I don't remember.

Q. For a period of a year? A. No.

736 Q. You filed it in the early part of 1933? A. Yes.

Q. This agreement——

Mr. Serri: Where is the agreement, Mr. Scileppi? I thought it had been offered in evidence.

Mr. Scileppi: I will offer it now in evidence, if necessary, if you want to use it.

Mr. Serri: I wanted the date.

Mr. Scileppi: If you care to refer to it, I will offer it in evidence.

737 Mr. Serri: I just want the date for the moment.

Mr. Scileppi: Any objection to offering it in evidence now?

(Marked Government's Exhibit 37 in evidence.)

The Court: I think you had better read it while you are offering it in evidence.

Mr. Scileppi: Do you want to read it?

Mr. Serri: It is yours.

All right, I will save you the trouble.

738 The Court: If you young men are tired, I will read it.

(Mr. Serri reads Government's Exhibit 37 to the jury.)

Q. That is in July, 1934; you had filed your application back in the early part of 1933? A. Yes.

Q. July or August? A. Yes, August.

Mr. Scileppi: August, if you call that the early part of 1933.

Q. Pardon me, August, 1933? A. Yes. 739

Q. Up to July, 1934, you had not been paying anything to the first mortgagee, had you? A. No.

Q. In fact, you had not been for some time back? A. No, sir.

Q. So the first mortgagee, wasn't he letting you know— A. Yes.

Q. (Continuing.) —that you were in arrears? A. Yes.

Q. And you must pay something? A. Yes.

Q. And threatening foreclosure? A. Yes.

Q. And he would write you that? A. Yes. 740

Q. And when you got those letters you would go to Miss Kay? A. No, sir.

Q. You wouldn't go to Miss Kay? A. No, I brought them to the Home Loan and showed them to the Home Own.

Q. Never to Miss Kay? A. No.

Q. Until July, 1934? A. I never went to Miss Kay. She came to me about four or five months after filing the application.

Q. And she begged you to let her handle it? A. Yes, she did.

Q. And you told her, "That is contrary to the Home Owners' Act, I wouldn't do it," is that what 741 you told her? A. I did not tell her that at all. I said I would not—it was in the hands of the Home Loan, I was going to leave it that way, but I do not understand your proposition, anyhow. Why should I—my husband——

Q. You did not understand her proposition? A. No. Why should I——

Q. What is the difficulty, Mrs. Beyer, about 50 per cent. for any saving? If I reduce your first

742 mortgage $500, and you pay me $250, is that a very difficult proposition? A. I know. Why should I give it to Miss Kay or——

Q. I am asking you not why you shouldn't. It is a very simple, clear proposition, isn't it? A. Yes, it is simple enough, but I didn't want to give it to her. She kept bothering me, coming, kept coming there, and saying why I didn't give it to her.

Q. Up to July, 1934, you did not get the first mortgage reduced, did you? A. I did not, no.

Q. Nor the second mortgage? A. No.

743 Q. And then you needed extra help to persuade the first mortgagee and your second mortgagee to do something, didn't you? A. Yes, but they wouldn't do it, though; they wouldn't do it for anybody, they told me themselves.

Q. They would not do it for anybody, but finally, after Miss Kay entered the picture, finally something was done? A. No, sir, no, sir.

Q. Now, wait, Mrs. Beyer; they wouldn't do it for anybody? A. No.

Q. But in July, 1934, you make an agreement with Miss Kay, is that right? A. (No answer.)

Q. Didn't you make that agreement with her?

744 A. I don't know. I don't know what it was. I don't know when it was.

The Court: Mr. Serri, you recall she said she didn't remember that before.

Mr. Serri: I will ask her.

Q. You don't remember signing that paper? A. No, I don't. That paper that my husband and I signed had something about the $250 in, and I——

Q. Didn't she make a copy of that——

The Court: Wait.

A. (Continuing.) —and that I should pay it off at $10 a month. 745

Q. Then— A. That is not in the paper.

Q. Didn't she make a copy before you signed it? A. Yes.

Q. Didn't she give a copy to you? A. She gave me a copy.

Q. Wasn't Mr. Fletcher present? A. Yes.

Q. And Mr. Fletcher read or heard what was being said? A. Yes.

Q. And written out? A. Yes.

Q. So that she made a copy right there in the presence of Mr. Fletcher? A. Yes. 746

Q. And gave you that copy and kept a copy yourself? A. Yes, sir.

Q. Which you signed? A. Yes, I signed and my husband signed it, both.

Q. And this was a copy of that paper? A. Why shouldn't it have the signature on?

Q. Now, please. She gave you a copy of that paper in the presence of Mr. Fletcher? A. No, not that paper.

Q. Didn't she give you that paper? A. Not that paper. I don't remember it.

Q. You mean you have never seen this paper here? A. The paper, I tell you, that I signed—— 747

Q. I am not asking about any signature now. Didn't she right there in the presence of Mr. Fletcher, with the paper that you had signed, didn't she make a copy of that paper and then give it to you, and you handed it to Mr. Fletcher? A. I don't know if that is the paper or not.

Q. What? A. I don't know if that is the paper.

Q. You don't know whether this is the paper? A. No, I don't.

748 Mr. Serri: That is all.

The Court: Step down.

(Witness excused.)

Mr. Serri: One more question of that witness. May she be recalled?

The Court: Yes, come back.

JENNIE BEYER, resumed the stand.

Cross examination by Mr. Serri (continued):

749 Q. Now, I ask you to look at this paper and ask you if you signed that at that time? A. Yes.

Q. Did you sign that? A. Yes, that is my signature and my husband's signature.

Q. Now, I ask you to compare those two papers. A. It is the same writing, but it is not the same thing.

The Court: Why waste so much time? All you have to do is offer them in evidence and read them both. If you ask her ten questions, you won't get anything. Show it to the jury.

750 Mr. Serri: I will show both to Mr. Scileppi.

The Court: Better have them marked.

(Marked Defendant's Exhibit H in evidence.)

The Court: Are they the same, Mr. Scileppi?

Mr. Scileppi: Why, substantially. They

are not copies. They were both written at the same time. Of course, it is not logical to assume that the defendant here would have made an agreement—— 751

The Court: What is the use——

Mr. Serri: Substantially they are copies?

Mr. Scileppi: Yes, substantially. She kept a copy of the agreement.

Mr. Serri: And she gave a copy of the agreement.

Mr. Scileppi: Yes, what purported to be the agreement.

(Witness excused.) 752

ROY H. RUDD, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Rudd, you are an attorney and counselor-at-law?

The Court: Wait a minute. You wanted something, Mr. Juror? 753

A Juror: Your Honor, is this other letter signed by Mrs. Beyer?

The Court: Yes, it is in evidence.

A Juror: I would like to see it.

The Court: Pass both of them around.

A Juror: The one that is signed by Mrs. Beyer.

The Court: You had better look at them

754 both, and then you will know. Send them both around to the jury.

We can listen to the testimony while one of you is looking at it.

Q. You are an attorney and counselor-at-law? A. I am.

Q. Licensed to practice in this State? A. Yes.

Q. You also were a closer for the Home Owners' Loan Corporation? A. That is correct.

Q. About how many loans did you close for the Home Owners' Loan Corporation? A. Approximately 400.

755 Q. Do you remember the occasion when you were first appointed? A. Yes, it was in the month of March, 1934.

Q. At the time that you were appointed did you receive any instructions with respect to the work that you were to do? A. Yes.

Q. Your duties? A. Yes.

Q. What were they? A. Well, I was to receive the file and contact the mortgagees and lienors to see what the amount was owing to them. I then figured it out with the approximate loan which they had given us, and the approved loan
756 which they would give us, and then I contacted the mortgagees and lienors in an endeavor to take a reduction if a reduction were necessary, and if they accepted, I then prepared it for closing. The preparation of closing was to draw up the bond and mortgage and affidavit of title, the financial sheet, which was then sent to New York.

Q. Will you please tell us in approximately what percentage of the loans that you closed was it necessary for you to negotiate with the first,

second or third mortgagees or the various lienors against the premises? A. Well, I will say about 75 per cent. 757

Q. And you entered into those negotiations? A. Myself.

Q. And consummated them? A. Yes, I did.

Q. And finally the loan closed? A. Yes.

Q. How much did you receive for closing a Home Loan? A. Originally I was attached to a title company and I received $10; then it was raised to $15, when I went back to my private office, and later on they took the franking privilege away from us and we got $17.50.

Q. Mr. Rudd, do you remember the closing or the attempted closing of the Beyer transaction? 758
A. Yes, sir, I recall that.

Q. Did Miss Kay ever come to your office? A. On several occasions, yes, sir.

Q. And you remember Mrs. Beyer coming to your office? A. Oh, yes, she came on several occasions, about four or five times.

Q. Do you remember—first, have you brought any records with you with respect to the closing? A. Yes, I have some.

Q. Have you— A. They are on that chair (indicating). 759

Q. Can you tell us definitely whether or not you negotiated with any of the lienors on the Beyer premises? A. I negotiated with all the lienors, three: first, second and third mortgagees.

Q. And as a result of your negotiations what were you able to do? A. Well, I contacted the first mortgagee's attorney, Mr. Rabino, and got him to accept a reduction in the loan, which I thought was proportionate. I then contacted the

760 second mortgagees, they are daughter and mother, and they came in and I got their reduction. I then got in touch with what I thought was the holder of the third mortgage, Edna Gregor, the holder of record. As I recall it, I called up a telephone number and a man answered and said that he would get in touch with Miss Kay to come down and see me. She came on several occasions, and when I suggested to her the proportionate loss which I thought was fair, she refused to take any loss; she wanted the full amount. I then got in touch with the first mortgagee in an at-
761 tempt to get him to take the loss which she would have sustained, and he refused to take any further loss. I then got in touch with Miss Kay and told her the situation and she again refused to take a loss. I then rejected the file.

Q. The only reason that the loan did not close was because Miss Kay would not take a reduction, is that correct?

Mr. Serri: I object to that. Please.
Mr. Scileppi: I withdraw that question.
The Court: Strike it out.

762 Q. Had Miss Kay taken the reduction which you suggested to her, would the Home Loan have closed?

Mr. Serri: I object to that.
The Court: Sustained.

Q. How much of a reduction did you ask Miss Kay to take on her mortgage?

Mr. Serri: I object to that. There is no

issue as to whether we should have reduced or not reduced. 763

The Court: There is an issue I am going to ask about, Mr. Serri, but that is not the issue. I will sustain that.

Q. On how many occasions did you endeavor to close the Beyer loan? A. On two occasions.

Q. And then you finally sent the file back? A. I sent it back the first time because Miss Kay would not take the reduction.

Mr. Serri: I object to that.

The Court: That is stricken out. You did not close it? 764

The Witness: No, on two separate occasions I attempted it and did not close it.

Q. On the first occasion do you say that the first mortgagee had agreed to take a reduction? A. Yes.

Q. And the second mortgagee had agreed to take a reduction? A. Yes.

Q. But Miss Kay refused to take a reduction? A. Yes.

Mr. Serri: I object to that. 765

The Court: Strike it out. Wait a minute, I am going to sustain that.

Mr. Scileppi, is Mr. Bradie here?

Mr. Scileppi: He was here yesterday.

The Court: Is the man here who closed that?

Mr. Scileppi: He was here yesterday.

The Court: Can you get him back here?

Mr. Scileppi: Yes.

766 The Court: I would like to ask him some questions. Do not get him back this afternoon.

Mr. Scileppi: He is coming right down.

The Court: Is he where you can get him within the next ten minutes? See if you can get him here before quarter of one, please.

Q. Now, then, after you sent the loan back to the Home Owners' Loan Corporation it was again returned to you, wasn't it? A. Yes.

767 Q. What did you do then? A. I then contacted Miss Kay again in an attempt to get her to take a reduction.

Mr. Serri: I object to that.

The Court: Mr. Scileppi, I think this is all immaterial. I am going to let him state the fact that he did not close it.

Now you may cross examine, Mr. Serri.

Cross examination by Mr. Serri:

768 Q. Do you remember while Miss Kay was present in your office your 'phoning to Mr. Rabino, the attorney for the first mortgagee? You remember that? A. I don't recall that, no.

Q. Do you remember you were 'phoning and Mr. Rabino refused to reduce? A. I had several conversations with him. I don't remember any distinct, separate conversation with him.

Q. Do you remember that to you he refused to reduce that first mortgage? A. He refused to reduce it any further than he had originally reduced it.

Q. And that was not enough to close? A. That was not enough to close, no, because Miss Kay—— 769

Q. Now, please. A. I am telling you——

Q. Now, please, that has already been ruled out. The third mortgagee is not involved here.

The Court: You are treading on dangerous territory. If you are to leave it to the jury, the presumption that it was because the third mortgagee would not reduce, that it could not close, you cannot have it both ways.

Mr. Serri: The issue is not as to why it did not close. 770

The Court: Why make——

Mr. Serri: They have tried to make it an issue.

The Court: I have ruled it is not, before. You are making an issue of it, because the first mortgagee would not reduce; you are opening the door to everything. There is no issue on that. I have ruled there is no issue on that particular point. Let it alone.

Mr. Serri: No questions.

The Court: Wait a minute. I want to ask you a question. 771

By the Court:

Q. In all these loans the idea of the Government was to clean off all liens, is that right? A. Yes, sir, your Honor.

Q. They would not place a mortgage unless all liens were cleared off, is that right? A. All liens cleaned off or subordinated to one-tenth of the appraised value.

772 Q. The idea was too that these mortgages had to be paid at a certain time, monthly, is that right? A. Yes.

Q. That is, for the first month they paid only the interest, but after that they paid interest and a portion of the principal, is that right? A. Not exactly. In the application the——

Q. I mean, the final end of it, that is the way they wound that up? A. The final closing provided for amortization and interest over a period of fifteen years.

Q. And the Government wanted to give them an agreement that they could carry out, is that right?
773 A. Yes.

Q. Did Miss Kay ever file with your department, while that loan was being closed, her agreement for the $250?

Mr. Serri: That is conceded, we did not.

The Court: I am asking this gentleman.

Mr. Serri: I am conceding we did not. At no time did we file an agreement.

The Court: You agree that in no case did you file these agreements with the Home Loan? That is conceded?

774 Mr. Serri: That is conceded.

A. I never saw this.

Mr. Serri: Wait, I will ask a question.

Cross examination by Mr. Serri (continued):

Q. Do you know the number of rejections after matters were placed in the hands of the closing attorneys, the number of cases they had to turn

back because they were not able to get the mortgagees to consent? A. Only in my own experience. 775

Q. You don't know roughly how many thousands were turned back to the Home Owners' Loan? A. No, only my own cases, you know.

Q. In your 400, you had how many rejections?

The Court: You won't need Mr. Bradie, Mr. Scileppi.

Mr. Scileppi: He is on his way over.

A. I had between 25 and 30.

Q. That you turned back because you were not able to obtain reductions? A. Yes. 776

(Witness excused.)

MILTON E. ENSLER, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Ensler, are you an attorney and counselor-at-law? A. I am.

Q. Duly admitted to practice law in this State? A. I am. 777

Q. Were you also a closer for the Home Owners' Loan Corporation? A. Yes.

Q. About how many loans did you close? A. About two hundred-odd.

Q. At the time that you commenced to close loans for the Home Owners' Loan Corporation did you receive any instructions? A. Yes.

Q. Do you remember what they were?

Mr. Serri: Please, please, just a moment.

778 Q. (Continuing.) With respect to the closing of loans?

Mr. Serri: I object.

The Court: I think that is fairly well established. There is no dispute.

Mr. Serri: That they tried to close and tried to do certain things; we got it very clearly from Mr. Bradie, what each closer's duties were, and I think we understand that.

The Court: I wouldn't go into that any further.

779 Mr. Scileppi: Very well. I was going to call Mr. Lipkon, who closed four or five hundred.

The Court: That fact is pretty well established, because there is no dispute.

(Witness excused.)

JULES K. FRENCH, JR., called as a witness on behalf of the United States, having been duly sworn, testified as follows:

780 Direct examination by Mr. Scileppi:

Q. What is your occupation, Mr. French? A. State Appraiser for the Home Owners' Loan Corporation, New York.

Q. How long have you been associated with the Home Owners' Loan Corporation? A. Since October 4, 1933.

Q. Originally what was your position with the Home Owners' Loan Corporation? A. Chief Appraiser, Metropolitan District.

Q. As such, did you come in contact with the various employees of the Home Owners' Loan Corporation? A. I did. 781

Q. Did you know the policies of the Corporation? A. I do, sir.

Q. Now, then, will you please explain to us the structure of the Home Owners' Loan Corporation, particularly with regard to personnel, in so far as the closing of mortgages was concerned?

Mr. Serri: I object to that. There is no dispute.

The Court: I will sustain that.

Mr. Serri: There is no dispute. 782

The Court: There is no dispute.

Mr. Scileppi: I think there is. Counsel said in his opening we did not have the facility and force to take care of these loans.

Mr. Serri: I said, did not function adequately, because apparently they got other people to do it. I am not disputing that they had people to examine and appraise the closings.

Mr. Scileppi: We had people for other purposes and I intend to prove that too, your Honor. 783

The Court: All right. Just try to stick to the issue that we have here. I will even allow leading a little bit there because these facts are fixed; they cannot be disputed, once they are testified to.

Q. Briefly, Mr. French, will you please inform me what the structure and the set-up was as to the closing of these loans, what personnel you

784 had there, and what was the schedule of procedure? A. Putting aside the minor technical details of appraisal and loan approval, once a loan was approved, it was referred to one of two authorities, either to the legal department for closing or to the adjustment division. Loans that went directly to the legal department for closing were those that appeared to be approved for an amount sufficiently high to cover the liens or ones with minor discrepancies between the two figures. Loans that went to the adjustment division were those that had major differences between the amount of loan approved and the total of liens
785 as revealed by the application.

Q. How many men were employed in this adjustment division, do you recall, Mr. French? A. In the beginning, and in the organization stages, up to about the 15th of November, 1933, the division handled it—the chief appraisers handled it in addition to their other duties, there were four such division chief appraisers, but about November, 1933, an adjustment division was established, first with two men, later increased to about seven, as I recall. The duty of those adjusters was to get in touch with the various lien holders
786 and endeavor to work out an adjustment of these cases that appeared to be beyond the ability of a closing attorney to adjust.

Q. Do I understand you to say, Mr. French, that it was also the duty of the closing attorney to endeavor to bring within the amount of the loan the then existing liens upon the properties? A. It was not only his duty, but he was required to accomplish an adjustment before he entered an application for title search.

Cross examination by Mr. Serri: 787

Q. Wasn't it also the policy, Mr. French, of the Home Owners' Loan to send a letter to the owner somewhat in this form, that "We have allowed you loan for $6,000, but encumbrances are shown to be a total of $8,000, deficiency $2,000; if you can arrange to remove this excess of encumbrances, then please get in touch with us as soon as you have done it"? A. Correct, but a copy was sent to all the lien holders.

Q. That is true, that is right? A. And to the adjustment division.

Q. You sent to the first mortgagee, second 788
mortgagee or third mortgagee? A. That is right.

Q. Have you any idea how many thousands of cases were turned back by the closing attorneys unable to close because of inability to get the mortgagees to agree? A. Those records have never been available to me, sir.

Q. But would go into the thousands? A. The records have never been available to me, sir.

(Witness excused.)

789

WILLIAM B. FLETCHER, called as a witness on behalf of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Fletcher, you are an investigator attached to the Home Owner's Loan Corporation? A. Special agent.

790 Q. That is your title, I am sorry. How long have you been a special agent? A. About a year and a half.

Q. Did you make an investigation surrounding the activities of one Gertrude Kay? A. I did.

Q. Also known as Gertrude Klein or G. Kay, or G. Klein? A. I did.

Q. And who operated under the name of Kay Operating Company and Kay Operating Company, Inc.? A. That is right.

Q. When did you begin your investigation? A. I started my investigation as an employee of the
791 State Office of the Home Owners' Loan Corporation in June, 1934. At that time it was brought to our attention in New York that a party by the name of Miss Kay was soliciting and collecting fees.

Mr. Serri: I object to that, Judge.

The Court: I do not know why you waited. That is ruled out. If you want to come down to the conversation, you may, but I won't allow any preliminaries of investigation.

Q. You did conduct an investigation? A. I
792 did.

Q. Did you interview a number of people? A. I did.

The Court: Just say yes or no.

The Witness: Yes.

Q. How many people did you interview? A. Roughly between 25 and 30.

Q. Did you interview the Beyers? A. I did.

Q. And the Wilsons? A. Yes, sir.

Q. And the Iovinos? A. Yes, sir. 793
Q. And the Sulfaros? A. Yes.
Q. And the Benemeritos? A. Yes.
Q. And the Abrimontes? A. Yes.
Q. And the Iovinos? A. Yes.
Q. And Redners? A. Yes.
Q. And the Sciortines? A. Yes.
Q. And the Terrones? A. Yes.
Q. And how many others besides those did you interview?

Mr. Serri: I object to that, if your Honor please. It is creating indirectly an impression that they cannot get in directly. 794

The Court: I am not sure that they cannot get it in directly.

Mr. Serri: I object to your Honor's comment. I want to note an exception.

The Court: I rule against you on that.

Mr. Serri: Exception.

The Court: Just tell the number that you interviewed.

A. Well, I had interviewed——

The Court: Approximately?

The Witness: Regano—— 795

The Court: Do not give names. Just give the number of people.

Q. About ten other people? A. About ten other people.
Q. Amongst those people are the Regano people, the Oriente people? A. Yes.
Q. And the Peresis? A. Right.
Q. And they are here in court? A. Yes.

796 Q. We don't want any of the conversation had with those persons, Mr. Fletcher, except and unless they were in the presence of the defendant. After you conducted your investigation did you finally speak to this defendant? A. I did.

Q. Before we get to that, do you remember the occasion July of 1934 meeting the defendant Kay at Mrs. Beyer's home? A. I do.

Q. You were present at that occasion? A. I was.

Q. Do you remember Miss Kay coming there? A. I do.

Q. Miss Kay, right there? A. Yes.

797 Q. Do you remember what was said? A. Yes, sir.

Q. Did you engage in the conversation? A. I did.

Q. Did you speak to Miss Kay? A. I did.

Q. And Mrs. Beyer also spoke? A. That is right.

Q. Do you remember what Miss Kay said on that occasion?

The Court: First I would like to know, who did you say you were?

798 The Witness: At the time that I went there, I went to the house in the morning. I knew Miss Kay was to come there that morning.

The Court: I am just asking, when these people did gather there for this conversation, who did you say you were there to Miss Kay?

The Witness: I did not tell Miss Kay who I was. Mrs. Beyer told her that I was her nephew.

Q. You did not have a badge on the lapel of your coat, did you? A. No, sir. 799

Q. As a matter of fact, you had no tie on? A. Yes.

Q. You had an old suit on? A. Yes.

Q. You just stood there and looked and listened and did a little talking? A. That is right.

Q. Tell us what the conversation was that ensued? A. Miss Kay came in that morning, if I may refer to my notes——

The Court: Yes, refresh your recollection, but please do not read from the notes. 800

Q. I do not think they can hear you back here. A. When Miss Kay came in that morning, she spoke to Mr. and Mrs. Beyer about the agreement which she wanted signed, and she told them at that time, she said, "When I wanted to do this for you in the beginning, I was perfectly willing to do it for nothing, because I hold the mortgage, I was willing to try to help you, but so long as you people have been so foolish and refused to take my advice, I now intend to make a charge for it."

I listened to the entire conversation, and Mrs. Beyer refused to sign any papers for her, and told her that she had previously refused to sign any papers, and Miss Kay got up in haste and was about to walk out of the door. As Miss Kay was about to walk out, Mrs. Beyer said, called her back, and said, "I spoke to my nephew, maybe he can straighten this out for me." 801

I had been in the adjoining room. I was called into the front porch, where Mr. and Mrs. Beyer

802 were with Miss Kay, and there she told me what her proposition was, explaining it to me in detail, and I tried to act as an arbitrator for Mrs. Beyer at that time, Mr. and Mrs. Beyer. She wrote out the agreement, she wrote out the agreement, and I asked her at that time, would she give a copy of the agreement to Mrs. Beyer, and she said she would, and the agreement was made out, and Mrs. Beyer signed it, and the other copy was retained by myself—Mrs. Beyer turned it over to me immediately.

Q. Then the papers were finally written by Miss Kay, were they? A. That is right.

803 Q. Have you given us all the conversation had between Mrs. Beyer and Miss Kay? A. There was considerable discussion at the time between Miss Kay and Miss Beyer—Mrs. Beyer, and Mr. Beyer, because previously Miss Kay had attempted to handle the Beyer case and said Mrs. Beyer had refused to give her the case to handle for her.

There was a rather heated discussion between Mrs. Beyer and Miss Kay and during the course of that discussion Miss Kay became very abusive to Mrs. Beyer and insisted that she could handle this case better than anybody else. She also

804 emphatically stated at the time, and I questioned her, I said, "What do you think the Home Owners' Loan Corporation would think about this?" And she said to me, "Don't worry about the Home Owners' Loan Corporation. I can take care of them."

I asked her at the time if she thought it would be contrary to the Home Owners' Loan Corporation, if they might object to such an agreement being signed. She said, "Don't worry about that,

I will take care of them. Everybody will be all right. Nobody can get into trouble, because," I said, "possibly Mrs. Beyer will get into trouble about signing that agreement." She said, "Nobody will get into trouble. I can take care of everything." 805

Q. Was anything said about the payment of any money in addition to that mentioned in the agreement?

Mr. Serri: I object to that.

The Court: I will rule that out. Mr. Fletcher, will you please take your time and read all your notes? I see you have some notes there. Take your time to read them all and then I will ask you the question, tell us the entire conversation that you had with Miss Kay or that was had there that you haven't already told us about. 806

The Witness: Well, your Honor, I might say that before I said there was a discussion about additional funds——

Q. Now, Mr. Fletcher, there is a jury here of twelve men that would like to hear your testimony.

The Court: Mr. Fletcher, you have given us some of the conversation, right? 807

The Witness: That is right.

The Court: Was there anything else said at any time? And if there was, you tell us.

The Witness: There was a discussion at the time regarding a fee for putting through the application to the Home Owners' Loan Corporation, and Miss Kay distinctly said

808 that she had originally agreed to put the application through and help Mrs. Beyer for 50 per cent. of what she could save, but inasmuch as Mrs. Beyer would not sign the agreement at the time she wanted her to, and that this thing had been dragging along so long, that it was her intention to charge a fee of $250 in addition to what she could save, and Mrs. Beyer told her at the time, "I haven't got $250," and she said, "We can add it to the agreement or add it to the mortgage which I now hold. You can arrange to pay me so much a month until it is fully paid." That
809 discussion took place that morning relative to the $250.

Q. Now, then, sometime later you met Miss Kay, did you not? A. I did.

Q. Where? A. At the offices of the Home Owners' Loan Corporation, fourth floor, Empire State Building, New York City.

Q. Did you have a conversation with her at that time? A. I did. I was present when Miss Kay was questioned at the office of the Home Owners' Loan Corporation.

810 Q. As best as you can recollect, will you please tell us what was said between those who questioned her and the answers that the defendant made to those questions? A. (No answer.)

Q. Do you remember, Mr. Fletcher? A. I am looking at my notes here to refresh my memory.

The Court: Go ahead now; there is a question.

Mr. Scileppi: Yes.

The Witness: At the time Miss Kay was interviewed at the New York office—— 811

Q. On how many occasions did you interview Miss Kay? A. It was twice.

Q. Twice while she was being interviewed? A. Yes.

Q. Did she come alone on both occasions? A. No.

Q. She was accompanied by someone? A. On one occasion she came alone and on one occasion she came with Mr. Serri.

Q. On which occasion did she come alone? A. That was the first occasion. 812

Q. All right. Now, tell us what occurred, what discussion was had with the defendant.

The Court: Is that the first one?

Mr. Scileppi: Yes, the first occasion.

A. The first occasion, on the first occasion when she came there, she admitted that she had entered into agreements with several applicants of the Home Owners' Loan Corporation; she also admitted she had accepted fees.

Mr. Serri: What was that last part? 813

A. (Continuing.) For procuring loans.

Mr. Serri: Now, wait.

The Court: What was the gist of the talk?

Mr. Serri: Did she say she had accepted fees for procuring loans?

The Witness: She did.

814 The Court: Give us the conversation as near as you can remember it without the conclusions at your first meeting.

The Witness: At the first meeting she was questioned on each particular loan where we had a complaint; where we knew a fee had been collected, she was questioned.

The Court: Now, you see, you miss my question. Suppose you tell us as near as you can the words that were used. But, first, who asked her the questions, you or somebody else?

815 The Witness: Mr. Craven spoke to her.

The Court: And you were present?

The Witness: I was present.

The Court: Mr. Craven interrogated her about some complaints that you had?

The Witness: Yes.

Mr. Serri: I object to your Honor's use of the term "complaint". There was no complaint by any of these people.

The Court: All right; you can have your exception.

Mr. Serri: Exception.

816 The Court: You questioned her about certain cases, is that right?

Mr. Serri: That is——

The Witness: Yes, sir.

The Court: They are certainly complaints now.

Mr. Serri: That is different.

Mr. Scileppi: There were complaints then too.

The Court: Tell us just that conversation, as near as you can remember, what ques-

tions were asked of her and what she said in response to the questions. Now, take your time and refer to all the notes that you want. 817

Q. Now, before we go into that, Mr. Fletcher. Mr. Craven was your superior at the time that this investigation was being conducted, is that right? A. That is correct.

Q. Do you know where Mr. Craven is today? A. No, I don't.

Q. Is he in the service? A. No, he is not.

Q. Don't you know he has gone South, that he is in Texas? A. I have heard so. 818

Q. I mean, you heard to that effect? A. Yes.

Q. He is no longer associated with the Home Owners' Loan Corporation? A. That is right.

Q. At the time, let us see if we cannot help you a little bit, that this defendant was questioned, was she shown any documents or any papers in connection with any loans? A. She was.

Q. Do you remember what papers and documents she was shown? A. She was shown the letters that have been exhibited here in court.

Q. Was she shown any applications? A. No. 819

Q. Was she shown any mortgagees' consents? A. She was shown the mortgagees' consent in the Terrone case.

Q. Was she questioned about these papers and letters? A. She was. She was questioned about the mortgagees' consent in the Terrone case and she admitted she raised the amount of the mortgage in order to get sufficient money to pay the attorney, that was needed to close that

820 case, and also that she had included a sufficient amount of money to take up her fee.

Q. You must speak louder.

The Court: How much money was for her fee?

The Witness: Her fee was to be $50. The amount included in the consent was in excess of $50, taking into consideration $175 for the attorney. The claim was $285.

Q. By "the claim" you mean the mortgage, is that correct? A. That is right, of $285, and the
821 consent was for $590.

Q. What did she say with respect to that situation when you presented her with it? A. That $175 was to go to the closing attorney—or to the attorney for Mrs. Terrone, and that $50 was to go to her. And we asked her——

Q. Was this attorney Mrs. Terrone's attorney? A. No, that was Mr. Lick, who was to be Mrs. Terrone's attorney.

Q. Whose attorney was he, in fact? A. Mrs. Terrone was recommended to Mr. Lick by Miss Kay, sent there by Miss Kay.

822 Q. What further conversation was had with the defendant, do you remember, Mr. Fletcher?

The Court: Taking these cases that are here before us now. Just narrow it down to these.

Mr. Scileppi: Yes.

The Court: Did you have any conversation with her about the Dostis case?

The Witness: She was questioned on the

Dostis case and admitted she had sent the letters in the Dostis case and also admitted she had collected a fee there of $20, and also admitted that she had returned it. 823

The Court: Now——

Mr. Scileppi: Now may I, if your Honor please——

Q. Was there anything said as to what this fee was for? Was she questioned about it and did she make any answers? A. She was questioned about the fee and questioned about whether or not, you had violated the law, and she admitted she knew it was against the regulations 824 of the Home Owners' Loan Corporation to take a fee, and stated she would have to take her chances anyway.

Q. Take the next situation, the Terrone situation. A. She was questioned on the Terrone amount and admitted raising the consents in order to procure the necessary funds to take care of herself and the attorney.

Mr. Serri: That has already——

Mr. Scileppi: He is all through.

Q. Do you remember the situation with respect 825 to the Beyer case? A. I do.

Q. Will you please tell us what was said to her and what responses she made to any questions in your presence? A. Well, there is none other—

Q. The exact words, if you remember them, and, if not, the substance. A. When she was at the office, Mr. Craven asked her if she knew me. She said no, she didn't.

826 He said, "Don't you remember him ever being present when you were at Beyers'?"

She said, no, she didn't remember it. She said somebody was there, but she didn't remember whether it was me or not.

Q. Is that all that was said about the Beyers? A. She was questioned about the agreement that was signed, she was shown a copy of it. She admitted she had written it.

The Court: Strike out the word "admit". Tell us what she said.

827 The Witness: She said, "I wrote that copy".

Q. Was she questioned further with respect to the other phases of the Beyer transaction? A. She was questioned also as to the $250 fee and at the time she was at the office she denied that she was going to take anything further except the 50 per cent. of what she received in that particular case—reduction.

Q. Please go on and tell us what further conversation you had with this defendant, and what responses she made with respect to the other

828 loans involved in this case.

The Court: I think you had better take up all the cases.

Mr. Scileppi: I don't want to be leading.

The Court: Take the Sulfaro case now. Was anything said to her about that?

The Witness: In the Sulfaro case she was questioned about the $25 which Mr. Sulfaro paid. She admitted she had received $25.

The Court: Strike out the word "admitted". Tell us what was said. 829

The Witness: She said that she received $25 from Mr. Sulfaro, and also said that when the investigation started, that she called Mr. Sulfaro and returned the $25 to him. She was questioned as to whether or not she knew Mr. Bauersfeld. She says, "I don't know Mr. Bauersfeld; I have never met the man."

The Court: Benemerito.

The Witness: On the Benemerito case she admitted she took $50.

The Court: No, no, strike it out. 830

The Witness: She said——

The Court: No, tell us what was said.

The Witness: She said she took $50 from Benemerito and has given Mrs. Benemerito $25 change for a $75 check. She stated she turned that money over to Mr. Wood of the New York Life Insurance Company when he had demanded it.

Q. Is that all in connection with that? A. Yes.

The Court: Nellie R. Wilson, anything said? 831

The Witness: Nellie R. Wilson. She said in the Nellie R. Wilson case that she had raised the amount on the mortgagees' consent. I haven't that consent, and I am not sure of the amount, but I believe there was $150 due at the time.

Q. What is the number of that?

832 The Court: It was raised to $500?

The Witness: It was raised to $500 from $150; but at the time the consent was made, not the application, but the consent, there was $25 due.

Q. Give us the conversation, Mr. Fletcher, let us be fair with this defendant, was that a part of the conversation that was engaged in? A. That was brought out at the time, that there was only $25 due on that mortgage at the time the consent was put in for $500, and she said Mrs. Wilson needed money to take care of the house,
833 it needed repairs, and she had intended turning the money over to Mrs. Wilson.

Q. I show you this and ask you whether you recollect it, and if you do, please say so. Was that shown to Miss Kay at the time she was questioned? A. I don't believe this was shown to Miss Kay.

Q. But discussion was had with respect to the mortgagees' consent? A. There was discussion, but I don't believe it was shown to her.

The Court: Is that all on the Wilson case? Go ahead on the Abrimonte.

834 The Witness: On Abrimonte, I am not sure whether that question—I have no notes on that.

The Court: How about Iovino?

The Witness: I have no notes on Iovino.

The Court: How about Redner?

The Witness: I have no notes on Redner.

The Court: Rosa Sciortine?

The Witness: I have no notes on Sciortine.

Cross examination by Mr. Serri: 835

Q. Mr. Fletcher, when you wrote to Miss Kay, she appeared voluntarily, didn't she? A. Not at first, Mr. Serri.

Q. Did you have to issue a warrant to have her come up? A. No.

Q. She came there? A. She came there.

Q. And then I came with her in person? A. Yes.

Q. And then she made a complete statement in your presence and that of Mr. Craven of everything she had done? A. Yes.

Q. Do you mean to say, Mr. Fletcher, that she 836
stated to you or to Mr. Craven that she had violated the law? A. She admitted that on her first appearance, and said, "I will have to take my chances in court."

Q. Don't you remember my stating to Mr. Craven that there was grave doubt——

The Court: Mr. Serri is talking about the first one. You weren't there.

Mr. Serri: The first one I wasn't there. I was present at the second and we went over the whole thing, and I am trying to see 837
if Mr. Fletcher will not agree with me as to what was said.

The Court: You mean at the second?

Mr. Serri: Yes.

Q. Didn't I tell Mr. Craven and yourself that there was serious doubt as to the law, based particularly on my experience in the War Risk Insurance case of Marcullen? A. You said that.

838 Mr. Scileppi: Does this qualify——

The Court: That is what Mr. Serri said, but Mr. Serri is not making the law in this case. I am making it.

Mr. Serri: I am only reciting a certain conversation.

The Court: He is only reciting a certain conversation he had.

Mr. Scileppi: I am going to oject to the comparison of this case with another case.

The Court: I am going to allow the conversation in, anything Mr. Serri said, or
839 anything they said to him, but, Gentlemen, remember, no matter what was said about law, in the final analysis I will give you the law. Whether I am right or wrong, you go along with me and nobody else on that.

Go ahead, Mr. Serri.

Q. Wasn't there discussion also as to those two statements, the one in the Terrone matter and the one in the Wilson matter, and didn't I or Miss Kay state that in filling out those things you more or less had to guess at amounts;
840 sometimes you might be accurate, sometimes you might not be accurate? A. That statement was made, Mr. Serri, but it should be——

The Court: Never mind.

Q. Didn't I myself state that I had filled out statements where I had asked an applicant what is the exact amount due and the applicant would say, "I don't know", and I would put down a

rough figure, and that people who made out those consents would put down rough figures? 841

The Court: Did Mr. Serri say that?

The Witness: Did Mr. Serri say that? Yes.

Q. Now, to return to the Beyer case, you were there present during the conversation and when that agreement was drawn up, weren't you? A. That is right.

Q. In fact, you suggested certain parts of the phraseology of this agreement, didn't you? A. No. 842

Q. Look at the latter part of that. Didn't you suggest the latter part of that?

The Court: I think you had better tell him just what part you mean.

Q. The very last sentence. A. No.

Q. For example, didn't you yourself suggest the putting of that language in? A. No, I did not.

Q. Isn't it a fact, Mr. Fletcher, you thought by including that last sentence you would sort of catch her and therefore you wanted that in? 843 A. No. The question was asked of Miss Kay, "What would the Home Owners' Loan Corporation think of it?" and she volunteered to put that in because she said she could take care of Home Owners' Loan Corporation.

The Court: What is it she put in?

Mr. Serri: That last clause.

844 The Witness: "No charge unless Home Loan mortgage closes."

Q. Didn't you think that was essential to go in there in order to catch her, so to speak? A. No.

Q. Didn't you suggest that? A. No, I did not.

Q. She did not insert in that agreement anything about the $250, did she? A. Not in this agreement, no.

Q. And if she had said, "I want $250 to put through the Home Loan," that was rather an important item, wasn't it? A. It was.

845 Q. And therefore that was something to go into that agreement, wasn't it? A. Yes.

Q. But it wasn't put in there? A. No.

Q. How many times did Mr. Craven talk with this list of people, or did he talk with any of these ten people who are in the indictment, the Sulfaros, and so forth? A. Yes, he did.

Q. A number of times? A. Yes.

Q. Do you know why he is no longer with the Home Owners' Loan?

The Court: That is excluded. We are not going to try him.

846 (Witness excused.)

Mr. Scileppi: Mr. Bradie is here.

The Court: I don't want him. I got what I wanted from the other witness. All I wanted to know was that——

Mr. Scileppi: May I call Mr. Bradie for a moment, then?

The Court: Yes.

SAUL B. BRADIE, recalled on behalf of the Government, testified as follows: 847

By the Court:

Q. As I started this, I will finish it: You closed this Beyer loan, didn't you? A. Yes.

Q. Was Miss Kay there when you closed it? A. At the closing, yes.

Q. Was this paper filed, this agreement?

Mr. Serri: It is conceded it was not.

The Court: Wait a minute. I am going to ask something further.

848

A. No, I never saw this paper before.

Q. Did you know Miss Kay at any time when you closed this loan had a lien of $250 for services rendered on the reduction of those two mortgages? A. I did not.

Q. Were you told that by Miss Kay? A. She did not.

Q. Were you told by Mrs. Beyer or Miss Kay that Miss Kay was to get $10 a month as a payment on that lien after this mortgage was put on by the Government? A. I was not.

Direct examination by Mr. Scileppi: 849

Q. Now, Mr. Bradie, you were questioned yesterday with respect to the instructions which you received from the Home Owners' Loan Corporation. Do you remember it? A. Yes.

Q. You have brought with you today a certain document.

Mr. Serri: There is no dispute that they were instructed——

850 The Court: I am not going to allow that in.

Mr. Scileppi: I want to offer this in evidence to show distinctly that there is no——

Mr. Serri: There is no dispute.

Mr. Scileppi: That this is not a figment of their imagination; they had specific instructions.

Mr. Serri: Yes, of course.

Q. I show you this——

The Court: Wait, it will be marked for identification. I will read it over and determine between now and Monday whether I will let it in.

851

Q. (Continuing.) Is that a copy which you received from the Home Owners' Loan Corporation? A. Yes.

Q. Who gave it to you? A. This is—at that time it was Mr. Blaustein who was in charge of the closing attorneys.

Q. In the fourth or fifth paragraphs is there anything there with reference to what the duties of the closing attorneys are with respect to liens?

852 The Court: Yes or no, that is all.

A. Yes.

Mr. Scileppi: I now offer it in evidence.

Mr. Serri: I object to it, not on the ground—we concede they were instructed.

The Court: Mark it for identification at the moment. It is offered in evidence, and I will reserve decision from now until Monday.

(Marked Government's Exhibit 38 for Identification.) 853

(Witness excused.)

Mr. Scileppi: I have several other people. I think I am in position to close the Government's case at this time.

The Court: My ruling will be this: I will permit you to ask questions as to other people. Then you will be guided whether you need rebuttal. You may not need rebuttal.

The Government rests, Mr. Serri.

Mr. Serri: I want to make a motion, but I would like to do it at a time when we can argue it. 854

The Court: I am not going to listen to any argument, Mr. Serri. If you want to make your motions, you can do so. If you want to wait, I am going to adjourn now until Monday anyway, Gentlemen. If you want to wait until Monday to get it in better form, all right, but I will listen to no argument on them on either side. I have definite ideas on these things, which I am keeping to myself, because if I let you know them, you will try to argue me out of them. 855

Mr. Serri: You mean you want me to file a memorandum of law with you?

The Court: That is what I mean.

Mr. Serri: But no open argument in court?

The Court: In brief. I am willing to be helped by either side. I am not in the position that I know it all. I hope I never do. I can be wrong.

Mr. Scileppi: At this time the Government

856 is going to respectfully move that indictment counts Nos. 6, 16 and 10 be removed from the consideration of the jury.

The Court: Motion granted.

(So you don't have to worry about them over the week-end.)

(Gentlemen, we will take a recess until Monday. Do not discuss this case. Forget it until Monday.)

(Recess to Monday, May 18, 1936, at 10:30 A. M.)

857

Brooklyn, N. Y., May 18, 1936.

(Met pursuant to recess at 10:30 A. M.; present as before.)

The Court: Mr. Scileppi, you rested the Government's case, is that right?

Mr. Scileppi: That is so, your Honor.

Mr. Serri: I ask Mr. Scileppi—I want to recall Mr. French for further cross examination—is he available?

858 Mr. Scileppi: I have put in a call for Mr. French, and I was informed by the Home Loan office that he would be in at noon. I have left word for him to come down.

The Court: They will get him over here as soon as they can.

Mr. Serri: That is satisfactory.

The Court: Now you may make your motion.

Motion to Dismiss the Indictment.

Mr. Serri: I move to dismiss the indictment on the ground that the Government has failed to make out a case of any violation of any law by this defendant; on the further ground that the act on which this indictment is based is invalid; on the further ground that the particular section, 1467, subdivisions a and e, on which this indictment is based, are invalid and in controvention of Amendments 5 and 6 of the Constitution; on the further grounds that it is an unconstitutional delegation of power in effect to enact criminal statutes to what is a private corporation, although the corporation is an instrumentality of the Government. 859 860

On all those grounds I move for a dismissal.

The Court: Motion denied. Exception.

Mr. Serri: At this time I offer in evidence a certified copy of a statement of the City Tax Department to show the arrears of taxes on the home of Mrs. Wilson, 13014 Farragut Road in April, 1934. The certified copy was duly furnished pursuant to subpoena.

The application said $700, and I want to show it was not $700, but $533 and some cents. 861

Mr. Scileppi: Of course, as far as we are concerned, we have no objection as to this exhibit going into evidence, that is, in this informal fashion, but this refers only to unpaid taxes. It does not mention anything about any assessments or arrears that may have been on the property.

Mr. Serri: We are not concerned with assessments. We are concerned with the item

862 of taxes. The application said $700. I simply want to prove the actual unpaid taxes were $533.

Mr. Scileppi: We do not know what assessments may have been on the property at that time.

Mr. Serri: I am not offering it for that.

Mr. Scileppi: It would bring it within the $700 figure. I do not know; we have not made a search, and Mrs. Wilson is not here now.

Mr. Serri: I am not offering it on assess-
863 ments. The item on the application says taxes. The item put down was $700. I want to show that was simply a guess, an estimate.

Mr. Scileppi: Then this is understood, this does not cover assessments that may or may not have been on the property at the time.

Mr. Serri: All right.

(Marked Defendant's Exhibit I in evidence.)

Mr. Serri: Gentlemen, this is a certified copy of the assessment rolls of the City of
864 New York, showing that unpaid taxes on the property of Mrs. Wilson as of April, 1934, when she made her application, was $533.55, and not $700, as stated in her application.

The Court: Does that have accrued interest in it too?

Mr. Serri: Sir?

The Court: Does that have accrued interest?

Mr. Serri: They simply put down the

amount. They say semi-annual division of taxes. 865

The Court: You ought to put down the interest, to have the correct figure.

Mr. Serri: It may be twenty or twenty-five dollars.

The Court: No, there is more than that, if you haven't paid taxes.

Mr. Scileppi: Compute the interest.

Mr. Serri: We will compute the interest. There might be $30 more possibly, but we will compute it.

Mr. Scileppi: No, it will be more than a hundred. 866

Mr. Serri: That is a matter of mathematics.

Mr. Scileppi: Let us see if we cannot agree, so there won't be any dispute.

The Court: Let us get it on the record. It is $533, without any accrued interest.

Mr. Serri: Correct.

Mr. Scileppi: Yes.

The Court: You can figure that yourself.

Mr. Scileppi: Taxes for 1932, 1933 and 1934.

Mr. Serri: That is right.

The Court: You can figure that yourself. 867

Mr. Serri: Yes, we will agree on the interest item. We will compute it.

LOUIS H. LOSEE, called as a witness on behalf of the defendant, having been duly sworn, testified as follows:

Direct examination by Mr. Serri:

Q. Mr. Losee, you were, in 1934, a closing at-

868 torney for the H. O. L. C.? A. Commencing in May of 1934.

Q. And you were the closing attorney in the matter or the loan of Mrs. Redner? A. Mrs. Bertha Redner.

Q. When did that loan close, by the way, if you remember? A. About October 1, 1934.

Q. Did Miss Kay contact the first mortgagee to obtain a reduction of the first mortgage? A. I believe that she did.

Mr. Scileppi: I object to that, if your Honor please.

869 The Court: Strike it out.

Mr. Scileppi: We are not concerned with beliefs.

The Court: Strike it out.

Q. Do you know, did she cooperate and contact the first mortgagee to obtain a reduction? A. I know that she so stated to me.

Mr. Scileppi: Now,——

The Court: Strike that out.

870 A. (Continuing.) And that in conversations with the Brooklyn Savings Bank——

Q. Now, who had the first mortgage?

Mr. Scileppi: Now,——

The Court: Now, wait a minute.

Q. Who had the first mortgage on this property?

The Court: Wait a minute, please. Mr. Losee, the question asked you for your own

knowledge and not what somebody else told you. First let us get it that way. 871

Mr. Scileppi: May I also request your Honor to instruct the jury not to give ear to any hearsay testimony?

The Court: Are you an attorney, Mr. Losee?

The Witness: Yes, sir.

The Court: You know what hearsay testimony is. We will keep away from it for a while. Just answer the question directly. Do you know of your own knowledge, first? That is the question.

872

Q. Do you know that she contacted the first mortgagee to obtain a reduction on the first mortgage?

Mr. Scileppi: I object to that.

The Court: You see, Mr. Serri,——

Mr. Serri: Yes.

The Court: Your question is put so it leaves it open. Say of your own knowledge. Yes or no, first.

The Witness: No.

The Court: Now, you know it through what somebody else told you, is that right? 873

Mr. Serri: Now, if your Honor please,——

Mr. Scileppi: I object to that, if your Honor please.

Mr. Serri: Wait.

The Court: Whatever knowledge you got was from what somebody else told you?

The Witness: That is correct.

874 Mr. Scileppi: That is, if he got any knowledge.

The Court: If you got any.

Q. Did this knowledge come to you from the first mortgagee herself?

Mr. Scileppi: Now,——

The Court: Sustained. No conversation between him and the first mortgagee would be admissible here.

Mr. Scileppi: Just a minute——

Mr. Serri: All right.

875 Cross examination by Mr. Scileppi:

Q. You closed this title, didn't you, Mr. Losee? A. Yes, sir.

Q. Do you remember who was present at the time of the closing? A. Outside of Mr. and Mrs. Redner, I cannot recall without reference to the closing record, the file.

Q. Was Miss Kay present? A. I don't recall beyond Mr. and Mrs. Redner, without a reference to refresh my recollection from the files.

876 Q. Have you brought any documents or any papers at all with you, Mr. Losee? A. I brought a copy of the financial statement.

Q. Did you bring a letter that you wrote to Miss Kay with you today? A. Yes, sir.

Q. May I see that letter, please? A. It is a copy of the letter that I wrote.

Q. May I see the copy, please? A. (Witness hands paper to counsel.)

Q. May I see also that blue piece of paper that you are reading, that piece of paper that you

are holding in your hand? A. (Witness hands paper to counsel.) 877

Q. I appreciate the fact that the loan happened some time ago. A. May I——

Q. I ask you to look at the letter, a letter dated October 5, 1934, and ask you whether or not that first would refresh your recollection as to who was present on that occasion? A. I believe Miss Kay was present, but I have a definite record in the papers that would make it sure.

Q. May I please ask you to read that letter? A. October——

Q. No, to yourself, to yourself. A. What is it? I have read it. I know what is in it. 878

Q. You know what is in it now, don't you? A. Yes.

Q. Now, then, when you wrote that letter did you enclose anything? A. I enclosed a check for $10.

Q. To whom? A. The check would speak for itself. I don't recall.

Q. May I please ask you to look at the check and tell me to whom you made the check out? A. Kay Operating Company.

Q. Then you mailed a check—to whom did you mail that check? A. Well, I don't recall. Either 879 to Miss Kay or to the Kay Operating Company.

Q. What address? A. I cannot say.

Q. Do you know, after looking at your papers and the check, whether or not Miss Kay was present at the time of the closing?

Mr. Serri: We do not dispute Miss Kay was present. Of course, she was.

880 A. Comparing the date of closing, which I think was October 1, 1934, and the date of this letter, October 5, 1934, it may mean that Miss Kay called at my office on October 5, 1934, and may or may not have been present on the closing. I believe she was, but I cannot say now at this distance.

Q. Has anything occurred to your memory?

The Court: The defendant's attorney admits she was there.

Mr. Senri: Of course she was.

881 Q. Has anything occurred to your memory since last Wednesday? A. In this connection?

Q. Yes. A. No.

Q. Nothing? A. I don't recall.

Q. Were you in the habit of mailing checks to the Kay Operating Company in the sum of $10? A. No.

Q. This is an unusual occasion, isn't it? A. Yes.

Q. Now, then, there was a card left with you in an envelope by this defendant at the time of the closing, wasn't there? A. I think it was left,

882 sir, on the date of this letter and not on the day of closing. When I found this letter and found it dated October 5th, I distinctly recalled that I wrote this letter immediately after receiving the envelope, to which you refer, the same day.

Q. Who left the envelope in your office? A. Miss Kay.

Q. What was in the envelope? A. Two five dollar bills and a card.

Q. What was on the card, Kay Operating

Company, do you remember? A. That is my best recollection. 883

Q. And then what did you do? A. That would be the reason why I drew the check to the Kay Operating Company.

Mr. Serri: If the Court please, if the Assistant District Attorney is trying to prove Miss Kay left $10 as a compliment to Mr. Losee, we will offer Mr. Losee's letter right in evidence; we admit it, and glad that we did it.

The Court: Wait a minute. Strike out the last part, "Glad that we did it." 884

Mr. Scileppi: All right.

The Court: The rest we will take as a concession and let it go at that.

Q. That $10 was given in connection with the closing of the Redner loan, wasn't it? A. Yes.

Q. By Miss Kay? A. Yes.

Q. And you sent back the $10? A. Yes.

Q. You wouldn't have it? A. (No answer.)

Mr. Serri: Have you any objection, Mr. Losee, to my offering this in evidence?

The Court: No, we have the facts. That is all we need. 885

Mr. Serri: I want to ask, do you have any objection to my offering this in evidence, Mr. Losee?

The Court: What is this?

Mr. Serri: Please, Judge, because I want to consider his feelings.

The Court: Please do not consider them.

886 You are offering it or you are not. I will rule on it when you offer it.

Mr. Serri: I offer it in evidence.

The Court: He hasn't anything to say.

Mr. Serri: I want to consider the feelings of a witness on a matter of this kind.

The Court: Don't bother about it.

Mr. Serri: Where he is an attorney.

Mr. Scileppi: I think his feelings have been taken care of perfectly well. He would not take the $10.

The Court: No more discussion about that.

887 Nobody's feelings matter around here. We are trying to get facts so the jury will know what to do, without respect to anybody's feelings.

Mark this check for identification and——

(Marked Government's Exhibit 39 for Identification.)

Mr. Scileppi: I object to the letter going in evidence, if your Honor please, on the ground that it is not—on the ground that there are other matters in the letter not connected with this case.

888 The Court: Sustained.

Mr. Serri: Exception.

The Court: Mr. Scileppi, I am having this check marked for identification.

Mr. Scileppi: All right.

Mr. Serri: Mark this for identification, please.

(Marked Defendant's Exhibit J for Identification.)

(Witness excused.)

WILLIAM L. MOFFATT, JR., called as a witness on behalf of the defendant, having been duly 889
sworn, testified as follows:

Direct examination by Mr. Serri:

Q. Mr. Moffatt, what is your official capacity with your company?

Mr. Scileppi: What company is he with?

A. Manager of the real estate department.

Q. Of what company? A. Brooklyn Savings Bank.

Q. Did your company have a first mortgage in 890
1934 on the property of Mrs. Bertha Redner? A. It did.

Q. Do you know of your own knowledge whether Mrs.—Miss Kay, contacted your company with reference to the reduction of the amount which you were to claim?

The Court. Now, wait a minute. That question is ruled out.

You see, Mr. Serri, you see——

Mr. Serri: I asked of his own knowledge whether he knew.

The Court: You did not say—— 891

Mr. Serri: I did, your Honor.

The Court: Read the question.

(Reporter repeated last question.)

Mr. Serri: I said of your own knowledge, do you know?

The Court: Now, the question is ruled out because it invites hearsay testimony. He might answer, I know it because——

892 Mr. Serri: I didn't ask that. I asked, of your own knowledge, what do you know, Judge.

The Court: Now, do not dispute with me. Did you see, of yourself, yes or no?

The Witness: Did she call at the bank, your Honor?

The Court: And talk to you?

The Witness: Yes.

The Court: Now, get the conversation. That is the way to get it.

Mr. Serri: I asked him, Judge, of his own
893 knowledge. Give him a chance to answer, he would have said, Yes, I saw Miss Kay.

The Court: Why don't you ask him directly?

Mr. Serri: I asked him directly, do you know of your own knowledge? I don't know of any other way to ask a question like that, Judge.

The Court: Yes, directly, because you have been inviting hearsay evidence all the time.

Mr. Serri: I have not.

The Court: Take your exception.

894 Mr. Serri: Exception.

The Court: You may ask this witness the question directly that you want, otherwise you won't get the evidence.

Mr. Serri: I take exception to your Honor's remark.

The Court: Take your exception.

Mr. Serri: Exception.

Q. Did you see Miss Kay in 1934 at your bank?
A. Yes, sir.

Q. Did she talk to you about the Redner first 895
mortgage? A. Yes, sir.

Q. Do your records show this defendant, Miss Kay, came to your bank? A. No, sir.

Q. What? A. No, we haven't any written records of calls at the bank.

Q. But you personally of your own knowledge remember those visits? A. She was there at the bank.

Q. Do you recall of your own knowledge about how many times she came? A. Two or three times.

Cross examination by Mr. Scileppi: 896

Q. You kept no records whatever of those visits? A. No, sir.

Q. Then you don't know whether it was in 1934 or 1933 or 1935, do you? A. The only thing I know in connection with the application for the Home Loan.

Q. Now, without having to refresh your memory, would you know what year she came to your bank, without looking at papers, would you know, would you be able to state whether it was 1933, 1934 or 1935? A. 1934. 897

Q. You have since, you have been spoken to about this case, or requested to come here, let us put it that way, you have opened up your file? A. That is right.

Q. And looked into it? A. That is right.

Q. And you have gone over the figures. Now, then, did anybody else speak to you in connection with the Redner loan? A. At this time? Or previous?

898 Q. In 1934, previously, or after. A. I could not tell you, sir.

Q. Is that because you don't remember? A. We have a great many people call in connection with other loans, sir, so whether it was more than one, or one, I couldn't tell you.

Q. Your institution is quite a large institution? A. Yes.

Q. And you are located right across the street here? A. Yes.

Q. A little louder.

899 Mr. Scileppi: If that fan is too much on you, gentlemen, don't hesitate to say so.

The Court: The people in the back cannot hear you. Better take that one off. Maybe that is why you cannot hear.

Q. And you have a great many loans on your books, haven't you? A. Yes.

Q. Many people come in to interview you and speak to you on the telephone in connection with these loans? A. Yes.

Q. So you would have no definite or distinct recollection as to any one person calling you up?

900 A. No, sir.

Q. It would be almost impossible to have that recollection, wouldn't it? A. No. In special cases you might happen to remember it.

Q. In a special case? A. Yes.

Q. But anybody—in the ordinary case, during the years 1934, 1933 and 1932, and even in 1935, you had occasion to speak to a great many owners of property upon which your institution held a first mortgage? A. Yes.

Q. You found that during the period of time taxes had gotten into arrears and people could not pay their interest, is that correct? A. Correct. 901

Q. Of course, it requires some effort on your part to collect these moneys, doesn't it? A. Yes.

Q. Now, then, about how many people did you interview daily? A. I haven't the slightest idea.

Q. You were busy from the moment you got in until you went home, is that correct? A. Yes.

Q. With people calling up and people coming in? A. Yes, sir.

Q. About how many loans did your institution close with the Home Loan? A. Between 80 and 100. 902

Q. And in every one of these there were negotiations with respect to the reduction of interest and taxes, with respect to the reduction of interest or sometimes a portion of the principal? A. That is right.

Q. And you handled these matters, didn't you? A. Not all of them.

Q. But you handled a great many of them? A. Some of them.

Q. Can you give me the name of any other person who at any time spoke to you with reference to the reduction of the interest or the principal on the first mortgage in which the Home Loan was going to advance the money? A. On this loan or any other loan? 903

Q. Any other loan. A. The name of the mortgagor?

Q. The name of a person who interceded for a mortgagor? A. The mortgagors themselves came in a great many times.

904 Q. As a matter of fact, you cannot recollect the name of anybody else that interceded on behalf of the mortgagor, can you? A. You mean as a second mortgagee or——

Q. First mortgagee. A. No, sir.

Q. The mortgagor usually interceded for himself? A. That is right.

Q. By the way, another question: Did you ever have occasion to receive any communication from the closing attorneys of the Home Owners' Loan Corporation with respect to the possibility of adjustment where the figures, the liens, were more
905 than the amount to be advanced by the Government? A. On this case or any other case?

Q. Yes, any case. A. Yes, sir, that was common practice——

Q. That the Home Loan called you up? A. Yes, and so much——

Q. And negotiated with you? A. Has been approved, do you accept the balance?

(Witness excused.)

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906 GERTRUDE KLEIN, the defendant, called as a witness on her own behalf, having been duly sworn, testified as follows:

Direct examination by Mr. Serri:

The Court: Mr. Serri, you don't need Mr. Moffatt any more?

Mr. Serri: No. Mr. Moffatt and Mr. Losee may both go.

Q. Miss Kay, where do you live? A. 1904 Fos- 907
ter Avenue.

Q. A little louder. I do not believe the jury here can hear. A. 1904 Foster Avenue.

Q. Who lives with you? A. My father and mother and a younger sister.

Q. How old is your father and how old is your mother? A. My father is 75 and my mother is 73.

Q. Who supports them? A. I do.

Q. Louder, please. A. I do.

Q. How many years have you been supporting them?

Mr. Scileppi: What was the question? 908

The Court: How many years has she been supporting her father and mother?

Mr. Scileppi: I object to that, your Honor.

The Court: Sustained.

Q. How many years have you been working, Miss Kay? A. Twenty-four.

Q. What? A. Twenty-four years.

Q. During the last ten or twelve years what have you been doing, what kind of work? A. I have been a real——

Mr. Scileppi: I object to that, if your 909
Honor please.

The Court: I will allow that.

Q. What kind of work have you been doing during the last ten or twelve years? A. I have been a real estate broker, licensed real estate broker, trying to sell property, effecting interest reductions, preventing foreclosures, and, where I could, effecting principal reductions.

910 Q. Where is your office? A. I haven't got an office. I do business home.

Q. From your home? A. Yes.

Q. You work? A. Yes.

Q. Have you a typewriter there? A. Yes, I have.

Q. And that is the famous typewriter that was used to write the letters?

Mr. Scileppi: I object to that. If counsel says, "infamous", I will not object.

The Court: Sustained.

911 Mr. Serri: You seemed to be so upset about finding some typewriter, I wanted to fix it that we did have it located at last.

Q. Have you a typewriter? A. Yes, I have a typewriter.

Q. Do you employ any secretary or stenographer or anyone in your work? A. I don't.

Q. Whatever work you do you do yourself? A. I do my letter-writing at night. I do my letter-writing and bookkeeping at night.

Q. You go out interviewing clients, and so forth, in the day, is that your practice? A. Yes, I am out from eight-thirty to six-thirty, and what
912 else I have to do I do in the evening.

Q. Let us take up each transaction one by one, the Dostis, Esther Dostis. Will you tell the Court and jury exactly what you did and what was said and done in that matter? A. I received a telephone message from the taxicab man, who is a man whose mother I had helped about seven years ago. She was in difficulties at that time——

Mr. Scileppi: We are going to be concerned with Dostis.

The Court: We will come back to that again, if necessary. I am going to sustain that objection. And if you will ask the questions first, toward laying your foundation, then you will get all these things without hearsay evidence. 913

Mr. Serri: I am not asking for hearsay.

The Court: That is hearsay evidence.

Mr. Serri: Well, strike it out. I cannot at every single step know precisely what a witness is going to say. I am trying to bring out the circumstances.

The Court: You may ask her simply if she met Mrs. Dostis, and her answer will be yes, and then you will ask under what circumstances and she will tell you, and then you can ask for the conversations with Mrs. Dostis. That is the proper way. 914

Mr. Serri: I gave her a general question, which I think calls for an answer——

The Court: It is not general.

Mr. Serri: I asked her, What did you do and say in the Dostis matter?

Mr. Scileppi: I move that everything be stricken from the record except she received a telephone call. I object to this help she may have given to this taxicab man's mother several years ago. 915

Mr. Serri: That is to show where the contact was made. It must be with someone she knew, that is all.

The Court: That is true. Then you got in the conversation between her and the taxicab driver.

Mr. Serri: I don't want that.

916 The Court: That is not relevant.

Mr. Serri: Surely, I agree with you. Strike that out.

Q. The taxicab man introduced you to Mrs. Dostis, to the son-in-law of Mrs. Dostis? A. Yes, he took me to their home. They had a two-family house.

Q. Then you had a talk with the son-in-law of Mrs. Dostis? A. I did.

Q. What did he say to you and what did you say to him and what was done? A. He said they
917 were threatened with foreclosure on account of taxes and interest arrears and they were demanding monthly payments, which he did not find it convenient to meet. He asked me if I could do something about it, and he gave me at that time a letter that he had received, just about received from the bank in which they had made reference to these arrears and were insisting on payment, continuation of monthly payments.

I told him I would see the bank and see if I could not get them to waive those payments.

I went to the bank, explained that the mother had told me that they had filed an application
918 for a Home Loan, and that they had hopes of it coming through very shortly, and wouldn't they give them a stay and leave them alone. And they told me if I saw that they followed the thing up, they would let them alone, and they made no payments after that.

Q. A little louder. I cannot hear you.

The Court: Strike that out, that they made no payments after that.

Mr. Scileppi: I have no objection.

Q. Do you know of your own knowledge that he did not make any payments from the month of May, 1934, up to September, 1934, roughly? A. I do know because he had received letters during that time which he turned over to me. Every time he would get a letter, he would call me and tell me they were bothering him again, and I went down there myself. 919

Q. Did he make a payment of $20 to you? A. Yes, he did.

Q. In September, 1934, did you return that $20 to him? A. I did.

Q. Will you tell the Court and jury what was said? A. He received a letter about September 17th, 18th, of 19—— 920

Q. From whom did he receive that letter? A. From the Brooklyn Savings Bank, the first mortgage holder. He received that letter about the 17th or 18th of September. He called me up and told me they were bothering him again and that I apparently hadn't done very much for him. That is what he said over the telephone.

I went over there and he gave me that letter and told me they were still bothering him, they were going to foreclose any day.

I simply told him, Well, since he was not disposed to make any payments, I could not hold them off forever, and I returned his money and took a receipt. 921

Q. Will you please take up the Terrone transaction. You knew Mrs. Terrone before 1934? A. I met her about five or six years previous to that.

Q. You had a small second mortgage on her premises? A. I did.

922 Q. I show you this letter and ask you if you received that from Mrs. Terrone? A. Yes, I received that letter.

Mr. Serri: I offer it in evidence.

Mr. Scileppi: Did she say she knows Mrs. Terrone's signature?

Q. Do you know Mrs. Terrone's signature? Is that the signatures of Mrs. Terrone? A. Mrs. Terrone could not write a letter like this, Mr. Scileppi, because she cannot write. She can sign her name.

923

Mr. Scileppi: Please speak to counsel.

The Court: The question is, is that her signature?

The Witness: I doubt it. I think the daughter wrote this letter. In fact, I know the daughter wrote it.

Q. That is a letter written by the daughter for the mother? A. Yes.

Mr. Serri: I offer it in evidence.

Mr. Scileppi: I object. It is only a hazard
924 on the part of counsel and I do not think that I should let this go in at this time. The Terrones were both here, daughter and mother, and they could have been questioned at that time with respect to this paper, and there is no proof that that is Terrone's signature, that she authorized it to be sent.

The Witness: We could get them here.

Mr. Scileppi: I am going to object to it.

The Court: I have to sustain the objection at this time. 925

Mr. Serri: I don't want to bother to bring them back. If he insists on forcing it, I should have to subpoena them back here.

Mr. Scileppi: They were here. They could have been asked about it.

Mr. Serri: Naturally some things you overlook.

The Court: I am going to admit it, Mr. Scileppi. I am admitting it on the ground that the daughter stated on the stand, as I recall it, that she used to write and take care of her mother's affairs. It is a question of agency. 926

(Marked Defendant's Exhibit K in evidence.)

Mr. Serri: May I have the date of the application. Mr. Scileppi, at this time?

Mr. Scileppi: May 17, 1934.

Mr. Serri: This letter is dated May 8, 1934:

"Dear Miss Kay:

"When you are passing near my home, come over, I want to talk to you. 927

Yours truly,

LAURA TERRONE."

Q. After you received that letter, Miss Kay, did you have a talk with Mrs. Terrone? A. Yes, sir, I went to her home.

Q. What was said and done, if anything? A.

928 She told me that she would like to obtain a Home Loan, that she had been to the office on Washington Street to file her application, and when she disclosed the fact that her husband was not available, and ill and away, and he was incompetent, they told her that she would have to see a lawyer and go through some sort of proceeding, because he was part owner of the property and she would be unable to obtain a mortgage without his signature, and he being incompetent, why, his signature would be of no value. She asked me what she should do.

929 Q. What did you say to her? A. Well, I told her to get a lawyer. She told me she did not have a lawyer. I suggested that she might go down and see my attorney.

Q. Did you bring her down to your attorney? A. Not immediately; a day or two later. And she disclosed the facts and he told her it would cost her $175.

Q. What did she say? A. Well, she told him she would think it over for a day or two and let him know. And then she went back there herself and told him to go ahead.

Q. Did you file the application for her? A. I
930 did.

Q. Where did you get the information for the application as to the taxes and interest and mortgage amounts, and so forth? A. I inquired of her what she owed, and she told me.

Q. Did you put down what she said? A. Yes, sir, I did.

Q. At that time, for example, in the application, there was put down $450 as due on the second mortgage in Edna Gregor's name. At that

time did you know the precise and correct amount 931
that was due? A. I did not.

Q. For a period of several years prior to that had payments been made to you or your sister? A. My sister had the papers. She received the payments. I knew nothing about that.

Q. When you filed the statement or consent, you put down $590. Did you know at that time what was the precise amount due on the second mortgage? A. I did not.

Q. Did you have any records before you? A. No, sir, I had not. I had not had the records in the Terrone matter for years.

932

Q. Did Mrs. Terrone say anything with reference to the $175, how she was to pay that? A. She said she did not have it and that she wanted to make some improvements in the house; she had a little money on hand, she put in a combination sink and a gas range in her apartment, and she suggested that I add the amount to my mortgage and it would be paid through the Loan.

Q. In the application you put down that the original amount on the second mortgage was $650. Was that the correct amount of the original second mortgage? A. I have since learned from my sister——

933

The Court: No, no.

Q. What was the original amount? A. A thousand dollars.

Q. When you made out your consent, that was subsequent to the making out of the application by Mrs. Terrone, wasn't it? A. Yes, it was.

Q. When you made out the consent for $590 did

934 you have any records before you or any copy of the application? A. I just guessed all the way through.

Q. When you put $590 down in that consent did you have the purpose of influencing the Home Owners' Loan Corporation?

Mr. Scileppi: I object to that, if your Honor please. I think that the paper will speak for itself.

The Court: I sustain the objection.

Mr. Serri: If your Honor please——

Mr. Scileppi: That is what the jury is
935 going to determine.

Mr. Serri: If your Honor please, that is part of the very law itself, and it says that—

The Court: Yes, but she is not going to be allowed to tell the conclusions of her own mind at that time.

Mr. Serri: As to whether she had a definite purpose. It seems to me it is proper to ask of the witness, Did you have a definite purpose to say something.

The Court: No.

Mr. Serri: Exception.

936 The Court: That is the question this jury has to determine, not a conclusion of a witness, not any more than I would allow somebody else to testify as to what conclusion they had in their own mind.

Q. Did you receive any money from Mrs. Terrone? A. I did not.

Q. Let us take up the Beyer transaction. Had you known Mrs. Beyer before 1934?

The Court: Mr. Serri, might I call your attention to the fact that the claim in this case is that she asked for the money. There is no contention that she got any money. 937

Mr. Serri: Thank you, Judge.

Q. Did you ask Mrs. Terrone for any money? A. No, sir, I did not.

Q. Did you do any work for Mrs. Terrone, aside from bringing her to the lawyer? A. I did prepare that application, and I brought her to the lawyer. That is all I did. I didn't even see her after that.

Q. And at any time did you ask her for $50, or any other sum of money for that? A. I did not. 938

Mr. Scileppi: That is highly leading, but I guess it is all right.

Q. This Beyer transaction, did you know her before 1934? A. Yes, I had known Mrs. Beyer for about four years.

Q. Will you tell when she came to see you and what was said, if anything, and what occurred at that time, what you agreed to do and what you did? A. She came to see me when the Lawyers' Title Company were dunning her with letters—— 939

Mr. Scileppi: I object to that.

Q. What did Mrs. Beyer say to you?

Mr. Scileppi: If they have any letters from the Lawyers' Title Company which were turned over to Miss Kay, the letters will speak for themselves.

940 Q. What did Mrs. Beyer say to you? A. She came to me again and asked me to make another loan, that the Lawyers' Title Company was bothering her; that she had filed an application with the Home Owners' Loan, and she was going up there at the rate of once or twice a week, and she felt reasonably sure that her loan would come through at an early date, and wouldn't I let her have another loan until such times as it did come through, so the Lawyers' Title Company would not proceed with the foreclosure they were threatening. I told her I could not lend her any more money
941 at that time because I criticized her very severely for not having made payments right along, she was still able to make them, they were all working; I did not know what they were doing with the money.

Q. Then what did you do, if anything? A. I refused to make the loan and she went away angry. About a week or ten days later she came back with another letter. She said, "Now, you see, you would not give me any money, and they won't give me any, they are going to foreclose, and you won't get anything." I told her I would see what I could do.

942 I called on the Lawyers' Title Company while she was in my home, while she was there. I spoke to the man I knew, and I told him that the application was filed and that she was following it up conscientiously, running up to the Home Loan every week, and that if he would just not bother her, that I was sure that they would receive their payment very soon.

Well, he said he would wait a week or two, and I repeated to her what he told me, and she left.

Q. Then did she come back afterwards? A. Yes, 943
some weeks after she received another letter and she came back with that letter. I called up again the man and again I prevailed upon him to leave her alone.

Q. And did she return later? A. She returned at the time that she learned from the Home Owners' Loan that they had approved the mortgage on her home, the new mortgage for a certain sum of money, and that it was considerably short of what she owed, and by reason of her not having made payments over a long period of time, and letting debts accumulate in taxes and in- 944
terest——

Q. Did she ask you to do anything else? A. She asked me what she was going to do.

Q. What did you tell her? A. I told her that she had better see the lienors, the mortgagees, and prevail upon them to make an adjustment, and I particularly advised that she see the first mortgagee. I had learned at that time that the first mortgagee was, while it was being serviced by the Lawyers' Title Company, it was actually owned by the millionaire oil interests, the Warner-Quinlan Company, and I felt in view of the fact that they were so well-fixed financially, that they 945
would not mind making a substantial cut on that first mortgage.

Q. Did she go in person? A. Yes, she discovered the name of the attorney for the first mortgagee happened to be Mr. Rabino, of 1 Park Avenue, New York.

Q. And then did she come back to you after that? A. Yes, she came back.

Q. What did she say? A. She told me he

946 said he would not do a thing, that they had a first lien, and therefore their position was a very favorable one, and they wanted what was coming to them, principal and interest.

Q. Did she ask you to do anything further? A. She asked what she was going to do. Well, she started to cry, and I said——

Q. What was your answer? A. I told her that I believed——

Q. Louder, please. A. I am very sorry. I told her I believed I could do something, but I was making my living doing that sort of thing, and that she would have to compensate me for it. I
947 told her I would take steps to contact the first and second mortgagees and try to prevail upon them to make the necessary adjustment so the loan could close, and if I succeeded she would have to pay me 50 per cent. of the amount that I saved, but she could make those payments in ten dollar monthly payments.

Q. Was an agreement drawn up to that effect? A. Not at the time I told it to her.

Q. When was that drawn up, afterwards? A. Yes, she told me she would discuss it with her husband and let me know. Then about a week
948 later I received a telephone message that I should come to her home a certain time—a certain date and a certain hour, and I recall now that she told me I mustn't be late, that it must be between the times that she mentioned.

Q. And did you go to her home? A. I went to her home.

Q. Was the agreement drawn up that has been introduced in evidence? A. First she asked me to explain to her husband what I had in mind, and

I told him. And then she called in somebody else, 949
and I now recall that it was Mr. Fletcher, who was in his shirt sleeves, and she introduced him as her nephew, and he practically dictated the drawing of that agreement. It is drawn entirely different from any other one that I ever drew.

Q. Was it Mr. Fletcher who suggested that closing clause, that closing line about tying up to the Home Owners' Loan, no charge unless it closed? A. I never used that phrase before.

Q. Did Mr. Fletcher suggest that phrase? A. Yes, sir, he did.

Q. And you put it in? A. I did not believe I 950
had anything to fear. Certainly I put it in.

Q. Then what work or services did you render Mrs. Beyer? Did you contact the first and the second mortgagees? A. I was up to the Rabino office a dozen times. It happened to be a very—well, Mr. Rabino is a very hard man to get to, he has half a dozen secretaries, I had to sit around there hours waiting for him. I met the man personally three or four times and I finally prevailed upon him to make the necessary allowance in order that the loan should close.

Q. Did you contact the second mortgagee? A. No, sir, I did not contact the second mortgagees. 951

Q. Pardon me, I thought you had. Now, roughly, how much time did you spend on the Beyer matter? A. I went up there accompanied by Mrs. Beyer three times; I was up there alone three or four times. Several times I went into the Lawyers' Title when I felt that their assurances over the telephone were not sufficiently assuring; I would go in there personally to see the writer of the letter.

952 Q. And in all, between telephone calls, trips, conversations, conferences, about, roughly, how much time did you spend on the Beyer matter? A. As far as the first mortgagee was concerned, that dragged along over a period of about three or four weeks. And then prior to that, as I stated before, I spent some time with the Lawyers' Title Company, who were servicing that first mortgage.

Q. In addition to the work which you did, how much of a reduction did you take on your small third mortgage? A. I really don't remember that, Mr. Serri.

953 Q. I mean, roughly, not precisely, how much of a loss did you take on your small third mortgage? A. With the interest that had accrued, she had not paid me——

Q. No, give us a rough figure. A. About $120.

Q. Did you receive a penny from Mrs. Beyer for all your work? A. Not a penny.

Q. Let us take up the Sulfaro transaction. Who introduced you to Mr. Sulfaro? A. Mr. Aronowitz.

Q. Who is he? A. He is an insurance agent for Sulfaro. He sold him life insurance and fire insurance.

Q. Did you subpoena Mr. Aronowitz to come
954 to court today? A. I did.

Q. Did his nephew bring in a doctor's certificate that he is unable to come? A. Yes, sir.

Mr. Serri: I don't want to encumber the record with it at this time.

The Court: I will take it. Show it to Mr. Scileppi.

Mr. Serri: All right. I offer it in evidence.

(Marked Defendant's Exhibit L in evi- 955
dence.)

Q. Mr. Aronowitz introduced you to Mr. Sulfaro? A. He took me to Mr. Sulfaro too.

Q. Mr. Aronowitz took you to Mr. Sulfaro? A. Yes.

Q. What was said and done there? A. Mr. Sulfaro is in the grocery business on Bath Avenue. He has a three-family house there and store, and he is a client of Mr. Aronowitz' and has been for a number of years. Mr. Aronowitz called me and told me that this client of his was being threat- 956
ened with foreclosure by the mortgage holders, the first and the second. He knew I had been doing work of that kind for a number of years, and I had interceded for a number of Mr. Aronowitz' clients long before Home Loan was in existence. He asked me if I would come over and talk to that client of his, see what I could do with it for him. I accompanied him to Sulfaro's home. He gave me the particulars as to the names and addresses of the first and second mortgagees, taxes owing, last date paid them, and so on, and I contacted these people, not personally, but through the mail, because he turned over to 957
me letters he had been receiving over a period of time, and I replied to those letters, particularly the last one, saying that an application was pending and that the mortgage would be paid off in full at a very early date.

Q. Did you turn over—did he turn over $25 to you to pay on account of interest?

Mr. Scileppi: I object to that, first, on

958 the ground that it is leading, secondly, it is assuming a state of facts.

The Court: There is a receipt in evidence.

Mr. Serri: Precisely. The Government itself has introduced a receipt. It shows exactly——

Mr. Scileppi: Let us find out first whether $25 was turned over.

Mr. Serri: Your own receipt shows that—

Q. Was $25 turned over to you? A. Yes.

Q. Did you give a receipt at that time? A. (No answer.)

959 Q. Did you give him a receipt at that time? A. I wrote a receipt on the back of the very envelope in which he had received a letter from the attorney for the second mortgagee demanding some interest money be sent through immediately.

By the Court:

Q. What was the amount of the interest? A. Your Honor, we have the letter here——

Q. I am asking you for your memory. A. I am so sorry.

960 Q. What was the amount? A. $546. I have since seen the letter.

Q. You received $25? He gave you $25. A. It was my suggestion he just pay $25 in order to satisfy the man until it came through.

By Mr. Serri:

Q. That $25 was not given you for any services? A. No.

Q. Did he give you an envelope and did you write that receipt on the back of it at the time you got the $25? A. Yes, sir, I did. 961

Mr. Serri: Is it conceded that is the original of which you introduced a copy, so as not to clutter the record?

Mr. Scileppi: There isn't any question about it. That is the original.

Mr. Serri: All right.

Mr. Scileppi: May I have that marked for identification, if your Honor please?

Mr. Serri: I will offer it in evidence and be through with it. 962

Mr. Scileppi: Mark it for identification.

Mr. Serri: No. If you are raising any question, I offer it in evidence.

(Marked Defendant's Exhibit M in evidence.)

(Mr. Serri reads Defendant's Exhibit M to the jury.)

Q. What did you do with that $25? A. I had received a telephone message from Mr. Aronowitz. I never heard directly from Mr. Sulfaro. Mr. Aronowitz always called me when Sulfaro wanted anything of me. 963

Q. What did you do with the $25? A. I received a telephone message from Aronowitz that evening again.

Q. No, no.

The Court: You received a telephone message from Mr. Aronowitz, but his question is, what did you do with that $25?

964 The Witness: Your Honor, I again received a telephone message——

Mr. Scileppi: I object to that.

Mr. Serri: I am not going to ask about the conversation. I am going to ask what she did after she got the telephone message.

The Court: Your question is, what did she do?

Mr. Serri: I will withdraw that.

Q. That night did you get a telephone message from anybody? A. Mr. Aronowitz.

965 The Court: Yes or no?

The Witness: Yes, sir.

Q. From whom, Aronowitz? A. (No answer.)

Q. Who is Mr. Aronowitz? A. He was a friend of Mr. Sulfaro's.

Q. After you got that telephone message from Mr. Aronowitz what did you do with the $25? A. Aronowitz called me——

The Court: Please, please.

Q. He called you.

966 The Court: You are not permitted to tell——

The Witness: I am so sorry.

The Court (continuing): —what you and Aronowitz said.

What did you do with the $25?

The Witness: I didn't send it. They told me not to.

The Court: What did you do with it, that is the question? Did you give it back? 967

Mr. Scileppi: I am going to request that the last answer of hers be stricken from the record.

The Court: Strike it out.

What did you do with the $25?

The Witness: But I am coming——

The Court: That is very simple. Did you give it back to him?

The Witness: No, not immediately.

The Court: Did you give it back to him some time later?

The Witness: Yes, about a week later. 968

Q. That is all we want. Did you ask or receive any other money from Mr. Sulfaro? A. No, sir.

Q. Let us take up——

The Court: Might I ask a question here?

Mr. Serri: Yes, sir.

By the Court:

Q. When you gave back the $25, did you take back your receipt? A. No, sir, I did not. 969

Q. Did you get a receipt for your money? A. I left the money——

Q. Did you get a receipt for your money, yes or no? A. No, sir, I did not.

Q. So that when you got back the $25 the thing was left in this position, that they had your receipt for $25, but you did not have their receipt for the return of the money? A. No, sir.

970 By Mr. Serri:

Q. Let us take up the Benemerito transaction. How did you meet Mrs. Benemerito, Miss Kay? A. Through a relative of hers, a cousin or somebody. I don't know. She mentioned who it was.

Q. What did Mrs. Benemerito say to you and what did you say to her, and then what did you try to do? A. She had a two-family house at that address with a two-car garage. She occupied the first floor. She had a tenant upstairs. She explained to me that the New York Life
971 Company were exacting payments of $100 monthly; the second mortgagee had been threatening foreclosure because he was not satisfied with the payments she was making to him. She asked me what I could do about that, that I had effected adjustment of payments for her friend and couldn't I do the same thing for her? And I said yes, I believed I could, and that if I did I should—why, my charge would be $50. I drew an agreement which the daughter signed and on which the mother made her cross, and the next day, or a day or two later, I went up to see
972 the New York Life Insurance Company and I explained the circumstances of the income there—

Mr. Scileppi: I am going to object.

The Court: You explained the circumstances?

The Witness: Yes.

Q. And then did you report——

Mr. Scileppi: I object to anything at all

that was done with the New York Life Insur- 973
ance Company.

The Court: I am going to allow her to say she explained the circumstances.

Mr. Scileppi: To whom?

The Court: He wants to know to whom.

The Witness: To one of the executives up there. Mr. Wood admitted I was there, Mr. Scileppi.

The Court: No.

Q. No, to whom did you explain?

The Court: If you don't remember, say so. 974

The Witness: I don't remember the name.

Q. You spoke to someone there? A. Yes.

Q. Did you go back to Mrs. Benemerito or did you see the second mortgagee first? A. I sent for the second mortgagee. I stopped at his house, he lived only about a dozen blocks from Mrs. Benemerito's home, but he wasn't home and I left a note that he should call at my home, and he did come there that very night, and I spoke to him, and I urged him not to foreclose. I pointed out it would cost him a lot of money 975
and that the best he could get would be the worst of it, so on, and so forth. He promised not to do a thing, to play along with her.

Q. Then did you report back to Mrs. Benemerito? A. I did.

Q. Did you tell her what you had done? A. Yes, I did.

Q. Then did she make a payment to you? A. Yes, she did.

976 Q. Gave you—how did she pay you, $75 check? A. She had a check that she received monthly from the City or somebody, I don't know, and she gave me that check, and I——

Q. You gave her back a $25 check at that time? A. Yes, I gave her back one of my checks for $25.

Q. And then Mr. Wood, of the first mortgagee company, came to see you? A. Well, he called on Mrs. Benemerito for the $100, which he picked up every month, and I had told her that if anybody disturbs her from the insurance company,
977 she should refer them to me.

Q. And you left your card there, which she was to give to them? A. Yes, with the result that Mr. Wood telephoned me and started to talk about the matter over the wire. I asked him if he could come over. He said yes. And he came over to my home and told me those people were well able to make those payments, had been making them for over a year or more.

The Court: This is out.

Q. Did you pay back the $50 to Mr. Wood or to
978 his insurance company? A. When Mr. Wood told me they would make no adjustment, why, I returned the $50. I gave him a check for $50, and I never saw the Benemeritos after that. I did not file their application, I had nothing to do with it. There was no application in at that time, your Honor.

Q. That is a matter——

The Court: But that receipt that you gave didn't say that you were going to pay

that money to the insurance company, did it? 979

The Witness: Your Honor, I was not supposed to pay——

The Court: It did not say that.

The Witness: Please, I cannot answer that yes or no. It was not supposed to go to the insurance company.

Mr. Serri: We don't——

The Court: That was your money?

The Witness: Yes.

Mr. Serri: We don't claim we were to turn that $50 over to the first mortgagee, no, no. 980

The Court: As I understand it, that $50 was for services that you were going to render, is that right?

The Witness: That is correct.

The Court: Then when the insurance company spoke about the mortgage, you paid them that $50 on account of their mortgage?

The Witness: Your Honor——

The Court: Is that right?

The Witness: Please let me tell things my own way. You have given everybody else a chance here. 981

The Court: I cannot do that. I must ask you questions.

The Witness: I cannot answer that way.

The Court: You did turn over the $50?

The Witness: When he said he would—he insisted on the payment remaining as was; I gave him the $50 because I failed to do anything for that woman.

982 The Court: Why didn't you give it back to Mrs. Benemerito, because she gave it to you?

The Witness: That would make a double trip over there. The man felt he was entitled to the money, he was supposed to get the money, and I gave it to him.

The Court: This man says you gave him the $50 because he told you you had no right to service that mortgage. Did he ever tell you——

The Witness: No, I never attempted to service that mortgage. I was attempting to 983 effect a reduction on payments for the woman, and when he would not agree to it, he was the district collector in that section, when he definitely said he would not make a reduction, I failed, and when I couldn't do anything further, and when he asked for the money to apply on that month's payment, I gave it to him.

The Court: You took Mr. Wood's word that that month's payment was due?

The Witness: I had talked to the New York Life Insurance Company; I knew I 984 could not go wrong. I did not try to talk to Mr. Wood.

The Court: All right.

Q. Miss Klein, the jury cannot hear you back here. You must keep up your voice and speak directly this way to enable the jury to hear you. Let me ask you, in connection with this Wilson transaction: You have known Mrs. Wilson some time? A. I believe I met Mrs. Wilson about 1930.

Q. And you had a small mortgage on her home? 985
A. Yes, I did.

Q. Did Mrs. Wilson come to see you with reference to this transaction? A. Well, Mrs. Wilson had—I had been seeing her regularly every month, she made payments monthly, as she so testified, to me on that second mortgage, but she had let her taxes accumulate, she had taken care of interest with me and with the Title Company, but she did not pay taxes. She let the taxes just ride and the Title Company had been sending her numerous letters demanding that those taxes be paid.

Q. Did she tell you that? A. And she gave 986
me the letters.

Q. What did you say to her as to what you were trying to do? A. I went down to the Title Company, I saw Mr. Bond, the man down there, the man who was servicing her mortgage, I saw him a dozen times. Finally, when he became very insistent on the matter and also——

Mr. Scileppi: I object. We are getting into a question which is again hearsay testimony.

Q. Did you report the substance of the con- 987
versations to Mrs. Wilson? A. I did.

The Court: Tell us what you told Mr. Wilson. That makes it proper. You see, gentlemen, it is legal distinction that you don't understand, but I have to keep the proof going in legally proper.

Now, you tell what report you made to Mrs. Wilson.

988 Q. What in substance did you report back to Mrs. Wilson? A. I told her that we would have to make some arrangements about those taxes because he was very insistent about those payments, and that while I might succeed in holding him off a month or two or three, I could not hold him off indefinitely.

Q. Did you then fill out the application for Mrs. Wilson for the loan? A. Yes, she suggested then that there was only one way out, and that was to file for Home Loan.

Q. And the information that you put in the
989 application, who gave you that information? A. She gave it to me.

Q. You put up $700 for taxes? A. I estimated everything throughout. I asked her and she wasn't sure, and I knew they wouldn't approve the loan for the amount that was necessary, and I just estimated everything.

Q. You put down $240 for interest? A. And she didn't put any interest, I have since learned——

Q. On your little contract with her it says "Interest, no arrears of interest," is that true? A. That is true.

990 Q. At that time when she filed the application you had down $500 as due on your second mortgage. Did you know the precise and correct amount that was due? A. I asked her and she started to get her receipts——

Q. No, my question, please— A. I am sorry.

Q. Did you know— A. No.

Q. (Continuing) —the precise and correct amount? A. I did not know the precise amount.

Q. Did you stop to figure out the precise and correct amount? A. I did not.

Q. What did you say to Mrs. Wilson? A. She started to get her receipts, she had one in one drawer and one in another, and she was trying to get them together. I told her, "Don't bother, because they won't allow me what is coming to me." In other words, as second mortgagee, they would give me a second nuisance value, a hundred or two hundred dollars; that they have no use for a second mortgagee—they hadn't at that time and haven't now. 991

The Court: Strike it out. You had better answer the questions.

992

Q. Now, several months afterwards you made out a consent. That consent was in reference to the second mortgage and in that consent you put down $650 as due. Now, at that time did you know the precise amount that was actually due on the second mortgage? A. I didn't even look at it. I knew the thing would be adjusted at the closing, and I possibly would be offered $50 to $100. That is all they were offering.

Q. $500 was the amount in the original application? A. In the original application.

Q. At the time you filled out the consent did you have a copy of the original application? A. I did not. The copy was sent in through the mail to the Home Owners' Loan. 993

Q. Let us take up the Abrimonte transaction. How long had you known Mr. and Mrs. Abrimonte? Keep your voice up. A. I met them in about 1930 also; they had a four-family house down there at Tompkins Place, and at that time the first mortgagee demanded a reduction of prin-

994 cipal and I made a small loan to Mrs. Abrimonte to take care of that. After I did that she started to improve the house and she slipped in her payments on the interest and on the taxes, and I was notified by the first mortgagee, the Title Company, several times; and did I care to protect myself, that they found on the record that I was the second, and that she was not making her payments on the first mortgage. When I received those letters I went down to talk to her and try to prevail upon her to make those payments.

Q. In 1934 did you have a talk with the Abri-
995 montes? A. Yes, the Title Company was still after her, sending agents down there to interrogate the tenants as to what they were paying, and what her income was. They could not understand why she did not make payments, that she had three rents and had occupancy of her apartment and did not turn in money to anybody.

I suggested that she had let so much pile up in the way of taxes and interest that it might be a good idea to file a Home Loan. She obtained an application. She sent one of the girls over to Washington Street for it, and I prepared the application in her home.

996 Q. After that what work or services did you render Mrs. Abrimonte? A. I followed up the Title Company continually in order to avert a foreclosure because they were very much incensed with that woman, she was collecting about $120 a month and did not give them anything.

Q. What did you tell Mrs. Abrimonte you were trying to do for her? A. I told her that I would do my best to avoid that foreclosure because if they started, that would burden her with the expense, and that would simply——

Q. And for that service what did she agree to pay you? A. $30. 997

Q. Have you received a penny of that? A. I have never received any money.

Q. Mr. and Mrs. Iovino, who introduced them to you in 1934? A. The lady next door, Mrs. Japogle. She telephoned me that her neighbors had received a summons in foreclosure and wouldn't I come down and talk to them and see if I could do something for them.

Q. When you arrived there, they turned over the summons to you? A. Yes, they did.

Q. And what did you do? A. They told me they had filed an application for a Home Loan, and relying on that loan coming through they had converted their two-family house into a three-family house in order to increase income, and they felt, when they notified the first and second mortgagees that a loan was pending, that they wouldn't bother them for payments; that they would receive their payment in full from the Government. 998

And now that he hadn't any more money, that he had used it for the improvements in the house, the second mortgagee had become impatient and had served him with papers and had placed a receiver in to collect rents from the tenants. He asked me if I could not have that receiver withdrawn, because he was embarrassed in the neighborhood, and he felt his loan would be granted, which had been on file for almost a year and a half. 999

Q. Were you to try to get reductions if possible on the first and second mortgages? A. When I inquired as to the indebtedness on the property,

1000 I realized it far exceeded the amount the Home Loan would lend, and I told him that too and he agreed he realized that they owed more than they would possibly let him have. I told him it would be necessary for me to do some work in connection with that because even after the loan was approved he would be unable to close it.

Q. And you made a contract for $100 to stop the foreclosure, according to the receipt in evidence? A. Yes, sir, I did.

Q. And if you obtained reductions, 50 per cent. of the saving? A. And that was to be paid
1001 monthly. I wasn't to get any lump sum—$20 a month.

Q. You were not able to obtain them? A. No.

Q. And you did not receive a penny? A. And I did not see the man again, I just dropped out of it. I couldn't do a thing with it, and I didn't even go back to it.

Q. Let us take up the Mrs. Bertha Redner transaction. How did you meet them? A. Likewise a friend of hers telephoned me that Mrs. Redner was being threatened with foreclosure by the Brooklyn Savings Bank. Mrs. Redner had a two-family house at that address and she
1002 was occupying one floor; a tenant was paying $65 a month for the other floor. The bank had made an arrangement with her that she turn over at least the tenant's rent, which she was not disposed to do. She felt she had an application pending and she could rely on the Government paying off her debts; why should she pay anything in the meanwhile? So she engaged me to contact the bank.

I had done similar services for her friend, but

not in a Home Loan matter. Now, the truth of the matter is I had effected a reduction of payment for her friend. 1003

Mr. Scileppi: I object.

Mr. Serri: Yes, what she did for her friend.

Mr. Scileppi: This is going far afield. She is talking about her friend and not in connection with Home Loan. I move that everything in connection with the friend be stricken out.

Mr. Serri: No objection. 1004

The Court: Strike it out.

Mr. Scileppi: May I ask your Honor to admonish the witness to testify about nothing in connection with her friend.

The Court: I will strike out anything that is hearsay.

Q. Were foreclosure papers actually served on Mrs. Redner? A. They were.

Q. And she turned the papers over to you? A. Yes, I have them.

Q. And did you contact the first mortgagee in an effort to reduce the mortgage? A. Not only that, but I went back to see Mr. Moffatt, and I pleaded with him not to put a receiver in there, and he did not, he did not put one in, and when the loan was finally approved, I saw him three or four times, to urge him not to impose foreclosure costs because of the waiting interest and whatever else was necessary, in order to have that loan closed. 1005

Q. And there were substantial reductions on

1006 the first and second mortgages? A. Yes, I called on the second mortgagee half a dozen times. On three occasions I was accompanied by Mrs. Redner. The second mortgagee was; well, they were very antagonistic towards Mrs. Redner. She did not even want to go there alone. She wouldn't go there alone. I had to go with her.

Q. For all the service you received $40? A. $40.

Q. That $40 you have retained? A. I kept that, yes.

Q. Let us come to the last transaction, the
1007 Sciortine. How did you meet the Sciortine family? A. They likewise came to my home. They mentioned the name of someone that sent them alone. Mrs. Sciortine and her husband and her son-in-law, they came with a letter in their hands for a Mr. Moranus, the closing attorney in the Home Loan matter. It appraised Mr. Moranus——

Q. Just a moment, please. Is that the letter which she showed you at that time? A. Yes, that is the letter she turned over to me the day she came in to see me.

1008 Mr. Serri: I offer that in evidence. It was marked for identification.

(Defendant's Exhibit C for identification now marked in evidence.)

Q. What did she say to you——

Mr. Serri: I will read that at this time.

(Mr. Serri reads Defendant's Exhibit C to the jury.)

Q. What did she say to you at that time when she showed you this letter? A. She told me she had been in the closing attorney's office on two or three occasions, that she turned all her papers over to him, that he had contacted the first and second mortgagees, and he could not get to any agreement with them, that they refused to make any concessions. 1009

Q. Then did she ask you to do anything? A. Yes, she asked me whether I could do anything for her. I told her I would try, and if I succeeded, why, she would have to pay me half of what I saved. 1010

Q. An agreement was drawn up to that effect, which is in the— A. I drew up that agreement which she signed, she and her husband, and witnessed by the son-in-law.

Q. Did you contact the first and second mortgagees? A. Yes, and I had numerous letters, which I believe I turned over, from the first mortgagee, written direct to me confirming conversations with him that I had in his office.

Q. Did you obtain substantial reductions in the first and second mortgages? A. I did. Not only that, the second mortgagee actually started an action in foreclosure. 1011

Q. She handed those foreclosure papers over to you? A. And I settled that.

Q. For those services you received $100? A. I made an adjustment on that——

Q. No, did you receive $100? A. Yes, I did.

Q. And that $100 you have retained? A. I have kept that, yes.

Q. Several of the witnesses testified that you stated that you could get the Home Loans through

1012 quick, in one month's time, forty days. Did you at any time ever make any such statement or any such promise? A. I did not.

Q. Mr. Fletcher on the stand testified that you admitted in the presence of Mr. Craven that you knew you were violating the law. Did you make any such statement to Mr. Fletcher or to Mr. Craven? A. I did not.

Q. What did you say to Mr. Craven and what did he say to you in the presence of Mr. Fletcher about that? A. I told Mr. Craven that every lawyer in the Boroughs of Brooklyn and Queens and New York was doing the very same thing,
1013 doing the very work that I was doing, and nobody ever felt there was anything irregular about it; I had been doing it for the last ten or twelve years; that all of a sudden that we should be prohibited, I could not understand.

Q. What did he say? A. He just looked at me and he told me it was contrary to a ruling, or some or other, of the Home Owners' Loan.

Q. Did you say you understood the ruling? A. No, I did not.

Q. Did you have any other talk with him afterwards? A. Yes, I did.

1014 Q. What did you tell him then?

The Court: Wait a minute. That is when you were there?

The Witness: No, the first occasion.

Mr. Serri: Yes, but with Mr. Fletcher present.

Q. What did you say to him? A. Well, he questioned me about these various matters and I told him exactly what I told you now.

Q. You made a full statement of it? A. Not only that, I brought my papers along with me, contracts that he knew nothing about, that I showed him. 1015

Mr. Serri: Your witness.

The Court: I am going to take an adjournment, but I should like to ask a few questions first.

By the Court:

Q. Did you know that you had no right to intercede for the loans and charge for the loans, did you know that? A. No, sir, I did not. 1016

Q. You did not include in any of these contracts a word about loans, did you? A. Because I had nothing——

Q. You didn't, did you? A. No, sir, I did not.

Q. Did you——

Mr. Serri: If your Honor please, I want to give her a chance to answer that question in full: I did not include anything about the loan because I did nothing about the loan.

1017

Q. You claim you did nothing about these loans in any of these cases? A. That is not what I claim. Will you please let me explain?

Q. Please answer my question. I want to know your frame of mind. Did you know that with respect to loans that you could not render any services and charge any money? A. I did not——

Q. Did you have that in your mind? A. With respect to an application I knew that, yes, sir.

1018 Q. You knew that you could not charge for that? A. I knew I could not charge for applications because I have seen such posters around in the Home Owners' Loan offices.

Q. I mean, you saw it when you visted the Home Owners' Loan office? A. Yes.

Q. You saw you couldn't do any work— A. I saw you weren't able to charge for an application for a Home Owners' Loan.

Q. And here, when you swore, you gave the name of Gertrude Klein, is that right? What is your real name? A. That is my real name.

1019 Q. Is that the name that you have your real estate license under? A. I have my real estate license under the name of Gertrude Klein.

Q. And what is the Gertrude Kay? A. That is just window-dressing. It is just a trade name. I adopted the name of Kay Operating Company, in 1925.

Q. And then you called yourself Gertrude Kay? A. I just called myself Miss Kay.

The Court: May I call your attention to the fact that the indictment has Gertrude Kay, alias Gertrude Klain. Better change
1020 that. She says her right name now is Gertrude Klein.

The Witness: The family name is Klein.

The Court: Now, I did that for the purpose of this indictment, to clear up any defect in the indictment. You had better move to amend that.

Mr. Scileppi: May we just withhold that for a moment, if your Honor please?

The Court: You had better keep that in 1021
mind.

We will take an adjournment.

Mr. Serri: If your Honor please, not with reference to that, but I see Mr. French has come in. I thought we might dispose of him.

Mr. Scileppi: Yes, I don't think he will be very long.

The Court: Are you through with her?

Mr. Scileppi: I will reserve cross examination of the witness until two o'clock.

(Witness temporarily excused.)

1022

JULES K. FRENCH, JR., recalled as a witness on behalf of the defendant, having previously been duly sworn, testified as follows:

Direct examination by Mr. Serri:

Q. Sorry to have to bring you back. I overlooked asking you a couple of questions. Mr. French, will you look at that letter, and is that one of the regular form letters sent out by the Home Owners' Loan Corporation at that time to owners or to applicants for loans where the loan 1023
exceeded, or rather, was less than the encumbrances? A. Where there was a major discrepancy and an adjustment had to be made, yes, this letter was sent. Now, a major discrepancy between——

Q. What do you mean by a major discrepancy? A. A discrepancy amounting to a considerable sum, perhaps 20 per cent. more of debt than there was loan approval.

1024 The Court: Did you hear that answer, Mr. Serri?

Q. When it was what, again? A. When it was approximately 20 per cent. more of debt against the property than the approved amount of the loan.

Q. Well, I show you another letter and ask you if that, although apparently the deficit is very small, not 10 per cent., you sent out that form letter? A. That was sent out in this case——

Q. So in other words, Mr. French——

1025 Mr. Scileppi: May I see those, please?

The Court: He has not offered them yet.

Mr. Serri: All we need to offer is one. I offer this one in evidence.

Mr. Scileppi: Now, then, I am going to object then to this witness testifying in connection with anything that has not been offered in evidence, particularly the first letter.

Mr. Serri: That is the first letter.

Mr. Scileppi: Now, wait a minute.

The Court: I will take it. Look at it and see if you want to object.

1026 Mr. Scileppi: All right.

(Marked Defendant's Exhibit N in evidence.)

(Mr. Serri reads Defendant's Exhibit N to the jury.)

Q. Then am I correct, Mr. French, in saying that the next step after you sent that letter to

the home owner and to the various lienors was that you waited until they sent in the consents, the reduced consents? A. No, sir. 1027

Q. Didn't the letter tell them to come in with the consents when they had obtained them? A. The letter was a formal notification of tentative approval of loan.

Q. And wouldn't you wait for the consents to come in? A. No, sir.

Q. Isn't it a fact that in those cases you would not send ordinarily the file to the closing attorney until those consents came in? A. Correct, sir.

Q. That is correct, isn't it? A. That is correct, but we would not wait. 1028

Q. You mean you tried to do something then? A. The case complete was referred to the adjustment division to follow up the letters to the mortgagees and to the home owner; in many cases made personal contacts, arranged conferences, and made the adjustment within our office.

Q. Yes, but did you tell the home owner, "Our adjusting division is working on these things," in this letter? A. In that letter, no.

Q. So the home owner receiving this letter would probably go to someone to try to adjust, wouldn't he? 1029

Mr. Scileppi: I object to that, purely speculative and hypothetical.

The Court: Sustained.

Q. At any rate, in these cases when you finally got the consents, you then turned over the matter to the closing attorney? A. Correct; when we got the adjustments.

1030 Q. Whether it was through your adjustment bureau or through the services, let us say, of someone else, as long as you got in the consents, that is what you were after? A. That is right.

Q. Long after did your practice change a bit? A. No, sir.

Q. It remained that way? A. Yes, sir.

Cross examination by Mr. Scileppi:

Q. Of course, it was significant that the same letter that was sent to the home owner was sent to all the lienors, is that correct? A. Yes, sir.

1031 Q. They were all advised of the situation that existed? A. That is right.

Q. In other words, as far as this letter, for instance, was concerned, the liens exceeded the amount which the Government intended to place as a loan on the property by over $2,000? A. That is right.

Q. So everybody who had a lien on that property was apprised of the situation, is that right? A. That is right.

Q. And the Home Loan Corporation did that? A. That is right.

1032 Q. And also, of course, notified the home owner? A. That is right.

Q. May I ask you a question, Mr. French, please? What was the fee that the appraisers were getting in appraising the various properties upon which loans were to be placed? A. There were three appraisals made, only one of which was on a fee basis. That particular fee appraisal, as provided for in the Act, the fee was established by regulations from Washington, limit-

ing them to $7.50; but prior to February 2, 1934, 1033
that fee was only $5.

Mr. Serri: If the Court please, we are not interested in the appraisal fees, and I move to strike it out.

The Court: It is set forth in the Act, that is why he is bringing it out.

Re-direct examination by Mr. Serri:

Q. Mr. French, the closing attorneys were private attorneys, I mean, who had their regular work in business and did this as extra work? 1034

The Court: Maybe some had only this work.

Mr. Scileppi: Will you repeat the question?

Mr. Serri: Yes, I said they were lawyers who had their regular business and did this as extra work. They had their own work and this was extra work in most instances.

The Witness: Yes.

Re-cross examination by Mr. Scileppi:

1035

Q. You would not say it was purely extra work; in most instances it was the major part? A. I don't know; I don't know.

(Witness excused.)

The Court: We will take a recess until 2:00 P. M.

1036 (Met pursuant to recess at 2:00 P. M.; present as before.)

GERTRUDE KLEIN, resumes the stand.

Mr. Serri: I want to ask a couple of questions more, if your Honor please.

Direct examination by Mr. Serri (continued):

Q. Miss Kay, please remember to speak up. In these ten transactions, what was the total amount of money you retained? A. $140.

1037 Mr. Scileppi: I object to that.

The Court: I will allow it.

Q. What was your answer, Miss Kay? A. $140.

Mr. Serri: Can the jury all hear back here?

Q. In the Terrone matter, where it is charged that you filed a false statement, did you receive anything from the H. O. L. C. on account of your second mortgage? A. No, I did not.

1038 Q. In the similar case, the Wilson, did you receive any money from the H. O. L. C. on account of your second mortgage? A. No, sir, I did not.

Q. You wrote a number of letters, didn't you, in the name of owners? Did you make any charge for them? A. No, sir.

Q. In these ten transactions, in how many did you help to fill out the applications? A. In three of them.

Q. That is, the Terrone, the Wilson and the 1039
Abrimonte cases? A. That is right.

Q. In the other seven cases, the people had already filled out their applications and filed them long before they came to you, is that correct? A. That is correct.

Mr. Sefri: Your witness.

Cross examination by Mr. Scileppi:

Q. You say that you received no money at all from the Home Owners' Loan Corporation on the Wilson matter? A. Yes, sir, that is what I said. 1040

Q. That is true, isn't it? A. Yes, it is true.

Q. And you would not want to be paid twice for the same thing, would you? A. No.

Q. Mrs. Wilson paid you her debt in full, didn't she? A. She paid it up monthly.

Q. So she paid it to you directly? A. That is correct.

Q. Then there is no point in the fact that you did not receive any money from the Home Owners' Loan Corporation? A. No, there is no point in that fact.

Q. You lost no money there at all? A. No, I 1041
was paid for it.

Q. And do you remember testifying this morning that Miss Wilson had been in the habit of making those payments monthly? A. Yes, sir.

Q. Now, then, on the 1st of June, 1934, how much money was due on that mortgage? A. I don't know. I heard what Mrs. Wilson said here.

Q. You have never taken the time or the trouble to investigate? A. I had no occasion to. The woman paid me every month.

1042 Q. You received the money, didn't you? A. I did.

Q. And you had no interest in keeping any records or accounts of how much the persons were paying you? A. I kept records. I jotted down in a little memorandum book what I collected.

Q. But in the Wilson case you kept no record? A. Yes, I did the same thing. Every time she paid me, I marked it down.

Q. Then in June, 1934, you did know what she paid on the second mortgage? A. I did not know
1043 until when I filled out the application. I found out then.

Q. I did not ask you anything about an application. You are inserting the application. A. Sorry.

Q. How much did Mrs. Wilson owe you in September, 1934? A. I don't know about that now.

Q. When did she finish up paying the loan? A. I think it was probably October or November, 1934.

Q. Was Mrs. Wilson in the habit of writing the balance due whenever she made a payment by check? A. No, she didn't do that, only toward
1044 the end, I noticed the last three or four payments, that she made notations on the back of the check.

Mr. Serri: Louder. I cannot hear a word you say.

Q. Before that she never made any notations, is that correct? A. No, not as I recall now. The reason——

Q. How much was due on that mortgage in

July, 1934? Tell me now, if you can. A. I 1045
couldn't tell you. I don't know.

Q. Did you in July of 1934 know how much was due on that mortgage? A. I did not.

Q. May I ask you to please look at one of the three Government's Exhibits known as Government's Exhibit 36, and tell me whether or not that is not your signature? A. Yes, that is my signature. That check is dated July 1934.

Q. That is right, and on the back of this check it says, up to date, balance $100, due on second mortgage. You signed that check, didn't you? A. Yes, I did.

1046

Q. And that was a check dated July 13, 1934? A. That is correct.

Q. In addition to that you say that you did all of your stenographic work, or your work that required writing and the keeping of books, and so forth? A. I have no help. I do everything myself.

Q. You sent out the notices? A. I didn't send any notices.

Q. You never sent any notice to Miss Klein— A. I used to take them with me.

Q. (Continuing.) —Mrs. Wilson? A. I took them with me at the time I went out, and if they 1047
paid, I receipted it, and if they didn't, I left it there.

Q. You took these notices with you, you say? A. In the Wilson matter I did because I called on her personally.

Q. I show you these five papers and ask you whether or not you can identify them? A. Yes, I wrote them all out. They are all in longhand.

Q. It became necessary to calculate the interest on the unpaid balance, didn't it? A. Yes.

1048 Q. And you calculated that, didn't you? Is that correct? A. Well, I always referred to the previous receipt, and I made a deduction of thirteen cents. The interest reduced itself by thirteen cents every month.

Q. Did you have any recollection of the amounts that were due at the time you made out those various receipts? A. At the time that I prepared that application, Mrs. Wilson started to look for the receipts in order to determine the balance, and she had a little difficulty getting them together, and I told her not to bother, we were just estimating the indebtedness all the way through. I
1049 estimated the taxes, interest on the first mortgage, and my mortgage.

Q. That is your story? A. That is true, Mr. Scileppi.

Q. Here is a notice dated June 13, 1934, instalment of principal, $25; interest, 75 cents; total, $25.75. Were you estimating when you made out this notice? A. No, I——

Q. This is pretty accurate. A. I prepared that notice at home and took it with me when I went to her.

Q. That is in June, 1934? A. Yes.

1050 Q. Now, then, you were being paid interest at the rate of six per cent. per annum? A. That is right.

Q. What would be the amount of the mortgage at that time, June, 1934, if the monthly rate was only 75 cents? A. Well, I didn't calculate that way. That is why she started looking for the receipt, and I told her not to bother. She told you that herself.

Q. How did you calculate that the interest was

75 cents? A. It reduced itself by thirteen cents every month. 1051

Q. Isn't it a fact that seventeen cents a month would be the rate of interest on $150 at six per cent. for one year? A. Yes.

Q. That is correct, isn't it? A. Yes.

Q. And in June—on June 13, 1934, when you gave her this notice, that was the fact then, wasn't it? A. According to that interest, yes.

Q. You say you never mailed these notices out? A. I mailed at some occasions; a good part of the time I took them with me. Does that matter, whether I mailed them or took them with me? 1052

Mr. Scileppi: I offer this in evidence.

Mr. Serri: No objection.

(Marked Government's Exhibit 40 in evidence.)

Mr. Scileppi: May I offer four other receipts as one exhibit?

The Court: I think you had better mark each one separately.

Mr. Serri: No objection.

Mr. Scileppi: All right. 1053

(Marked Government's Exhibits 41, 42, 43 and 44 in evidence respectively.)

Q. You say that there may have been some haziness in your mind about the exact amount. Do you think that it could have ranged over a difference of $500, as it did in this case? A. Well, there was a difference of over $200 in the taxes.

1054 Q. I am asking about the claim that you filed on your mortgage. Your receipts there indicate that the mortgage was $150 in June? A. Yes, sir.

Q. And the check shows that that mortgage was paid off sometime in October, November of the same year? A. Yes.

Q. Now, then, your application was filed for $650, wasn't it? A. Yes.

Q. That is your mortgagee's claim? A. That was the original mortgage, $650.

Q. And you consented to take $650 in bonds in the event that the loan came through? A. There
1055 wasn't even a chance of getting even a hundred, and I told her so.

Q. But that is the paper that you filed? A. Yes.

Q. And you say now that you did not know in June of 1934 that there was only $150 due on that mortgage? A. I knew that was approximately the amount that was due that I had marked on the application and on the consent, but what the exact amount was——

Q. You knew that? A. Yes, but I didn't check on the exact amount.

Q. You were pretty accurate when you sent
1056 these notices out, weren't you, referring to 40, 41 and 42? A. I have a schedule that reduces the interest according to the payment, and that is the way I made it out.

Q. And that was pretty accurate? A. Well, thirteen cents reduction every month.

Q. Seriously speaking, you keep pretty accurate records of the amounts due you, with the number of mortgages you hold? A. I haven't got many of them. I have about half a dozen of them.

Q. And of the amount of interest in arrears? 1057
A. As accurate as one can be.

Q. As accurate as one can be. You did not trust to luck or conduct it haphazardly? A. I do that work at night. I work all day, seven days a week.

Q. Do you keep accurate records? A. As accurate as I am able to keep them.

Q. There was introduced in evidence here a statement of taxes on Mrs. Wilson's property. It is contended by you that at the time the application was filled out there was only $535 in taxes due. You recollect that, don't you? A. Yes, Mr. 1058
Scileppi.

Q. Now, then, I show you this paper and ask you whether or not you have ever seen it before? A. No, I never saw this paper. I didn't write this.

Q. Did you make the application out for Mrs. Wilson? A. The original application, yes, but I have never seen this paper.

Q. Now, then, you were talking about the arrears in taxes, weren't you? A. Yes, sir.

Q. And you discussed the matter with Mrs. Wilson, didn't you, or didn't you? A. I did not discuss it with her. At the time I filed the appli- 1059
cation I asked her what she owed, and then she again started to search for bills, and I told her not to bother, we would estimate it, and that is what I did.

Q. Didn't she mention any figures at all? A. No.

Q. Let us see. A. Not at the time when——

Q. If they did not arrive at the sum of $700, if you and Mrs. Wilson did not arrive at the sum of

1060 $700 in this fashion: Taxes, second half 1932, $200.25; second half 1933, $165.70; full year 1934, $332? A. But the full year of 1934——

Q. Just a minute. Isn't that the way that the sum of $700 was arrived at? A. No, sir, it was not. As a matter of fact,——

Q. Will you please— A. There wasn't any tax in 1934 until May.

Q. I am not here to dispute with you the question of whether there was a lien or not.

Mr. Serri: Please, you asked her how they arrived at it. She did not include in the
1061 statement taxes which were not a lien at that time. Your application asks what arrears there are. So if you are making out an application in April, 1934, you do not put in the taxes due in October. They are not a lien, they are not in arrears.

Q. Have you totaled those three sums that I have just given to you? A. No, I haven't. I wasn't listening to them.

Q. Now, then, may I ask you to look at these figures and see whether or not the three sums that
1062 I have just recited to you do not total $702.15? A. But those are not a lien at that time.

Q. Do those sums which I have just read to you total— A. Yes, they do.

Mr. Serri: We will concede that is correct.

Q. Isn't it a matter of fact that is how you and Mrs. Wilson arrived at the fact that there was $700 due on the property? A. No, sir, that is not a fact.

Q. Well, now, when did you make the application out? A. I don't remember. You have it here. So why not refer to it? 1063

Q. That was made out April 1, 1934, wasn't it? A. If that is what is stated, that must be so.

Q. Did you know what arrears in taxes were on Mrs. Wilson's property at the time you made out the application? A. I did not. I estimated it just as I did the first mortgage interest and the second mortgage.

Q. You estimated it from what figures? A. From no figures. I merely put down enough so that we would make proper adjustments at the time of closing if it ever did close. 1064

Q. At the time you made it out according to the figures which you checked later on, you did not know that it was about $150 more than the actual amount which you claim was due at that time? A. All those figures were excessive. I knew that the loan granted would be considerably less. That was the situation in every case.

Q. You knew when you filed your application that it was false? A. It was not false. The figures were exaggerated, that is all.

Q. Oh, exaggerated? A. As to the first mortgage, the interest and everything else. 1065

Q. When you increase figures by one hundred per cent., would you call that exaggeration? A. I was estimating it. I thought as long as I was estimating it, I might as well estimate——

Q. Would you call that exaggeration if you increased figures one hundred per cent. ? A. Yes, that is exaggeration.

Q. And if you increase figures by five hundred

1066 per cent., it is exaggeration. A. What would you call it?

Q. Falsification.

Mr. Serri: I object to that and move to strike it out.

The Court: Strike out her question and Mr. Scileppi's answer.

Q. What would you call it, let me ask you? I am asking you. Don't ask me any more questions. You see what happens. What would you call it? A. I cannot be any worse off than I
1067 am.

The Court: Might I ask you, Miss Kay: That mortgage money would have come to you, wouldn't it, that $500?

The Witness: No, sir, your Honor, it would not.

The Court: You owned the mortgage?

The Witness: I know Mrs. Wilson testified as to that.

The Court: Please, never mind Mrs. Wilson. You were the owner of that mortgage?

1068 The Witness: That is right.

The Court: It was in Mrs. Gregor's name?

The Witness: My mother's name.

The Court: That was really your mortgage?

The Witness: Yes, your Honor, it was.

The Court: So, if the Government did lend the full amount of money, that money would have gone to you, wouldn't it?

The Witness: They never loan the full

amount, never. You cannot bring one in- 1069
stance here where they did.

The Court: You see, I am just trying to get the operation of your mind at that time, Miss Kay.

The Witness: The operation of my mind was to get what was coming to me and there was small hope.

Q. But you did get every cent? A. Because the woman was honorable and she made payment to me.

The Court: Wait until I finish my question. 1070

By the Court:

Q. You are a real estate woman? A. Yes.

Q. You knew if the Government paid that mortgage off in full that you would have got $500, is that right? A. No, sir. I—may I explain that, your Honor?

Q. No, please. You look at the figure, $500, there. A. Yes.

Q. That is the only figure I mean. A. Yes, sir.

Q. That is your mortgage? 1071

Mr. Scileppi: It is $650.

The Court: On her application it is $500.

A. Yes, that is my figure.

Q. That is your own handwriting? A. That is correct.

Q. And you knew if the Government loaned that full $500, you would have gotten that check?

1072 A. Yes,—if you will let me explain that. It cannot be answered with a yes or no, your Honor.

Q. If the Government loaned that full $500, to whom would they have made that check to at the Home Loan Corporation? A. It is not a check.

Q. Who would they give the money to? A. The closing attorney sends for you and you have to make a certified affidavit of what is coming to you at the time of closing; you sign other papers at the time of closing. The Home Loan people are here. They will explain that to you. And then——

1073 Q. You see, you do not answer my question. Would that money come to you? A. If I insisted upon claiming it at that time, yes.

Q. Well, put it that way. A. Yes.

Q. If you insisted upon closing, then you were entitled to $500? A. Yes, your Honor.

Q. The money would have come to you? A. Providing the home owner did not protest.

Q. But the home owner said you told her you would adjust with her and give her the money, is that right? A. No, your Honor, that is not what I said.

1074 Q. Well, she says that you were to take only $150, but you were to give her the $350, is that correct? A. May I explain how that was said?

Q. Yes. A. Please, your Honor.

Q. Describe it. A. When I put down the figure of five hundred, she says that it cannot be that much. "Well," I said, "we won't get it anyhow." I said, "We will be lucky if they will grant 70 per cent. of what you owe, and," I said, "furthermore, if there is any left over, which I doubt, it will be allowed to you for repairs."

Q. But you would get the money? A. I would have never taken it. 1075

Q. You are one question ahead of me.

Mr. Serri: We are willing to concede the actual fact——

The Court: Please, Mr. Serri, I want to get the operation of her mind. You cannot help her on that.

Mr. Serri: No, no. I mean, I am not asking for the operation of her mind. I am willing to concede the actual fact——

The Court: No, please.

Mr. Serri: All right, exception. 1076

The Court: I will ask the question.

By the Court:

Q. You knew that the money would come to you? Whatever adjustment you would make later on, I am not asking about that. A. If I insisted upon claiming it at the time of the closing, yes. At the time of the closing, it is customary for the closing attorney——

Q. Please, you have told us that. You were a real estate woman, weren't you? You knew— 1077

A. It doesn't look like it now.

Mr. Serri: You are asking for the operation of her mind, and she is trying to tell you exactly what she thought, that she hadn't the faintest idea that there would be any surplus at all; she knew there would be no surplus; therefore, she didn't even stop to think of the surplus.

1078 Q. Did you know there would be no surplus at the time you put that $500 in? A. Yes, because the indebtedness on the property exceeded what I considered the value.

Q. Then why did you put $500; if you knew there wouldn't be a surplus? A. I put that down. They give you whatever they want to.

Q. Do you mean to tell this jury that in this application you put down any figure that came to your mind and then you thought of adjusting that later? A. No, that is not what I mean to tell them.

1079 Q. Be careful of what you say. A. That is what I had in the two applications on file——

Mr. Serri: Louder. The jury cannot hear you.

Q. In this Wilson thing you put down $500, knowing at the time you put it down that you would not get it, is that right? A. They would not get it.

Q. That is what you say now? A. That is the truth.

1080 Mr. Serri: Miss Kay, you will have to speak up.

By Mr. Scileppi:

Q. At the time the application was made out, which was signed by Mrs. Wilson, which you made out, your mortgage was inserted there for $500, wasn't it? A. Yes, it was.

Q. And then——

The Court: Mr. Scileppi, you had better refer to both of them. There is one she made out and one she did not make out. This is the one she made out, the one for $500, as I take it. 1081

Mr. Scileppi: That is right.

The Court: The figure $500 is in your handwriting?

The Witness: Yes.

Q. Also in your handwriting are the figures $650 in the mortgagee's consent to take bonds, is that correct? A. Yes, that is correct.

Q. There had not been any difference in the amount of the mortgage between the date when you made out this application, April 1, 1934, and June 4th, when you filed the mortgagee's consent to take bonds, was there? A. I recited in the mortgagee's consent the amount of the mortgage. 1082

Q. I mean, at that time there wasn't any change in the figure of the mortgage? A. No.

Q. It had been reduced? A. That is correct.

Q. You knew Mrs. Wilson was making monthly payments of $25 and interest? A. What is the date of that consent?

Q. June 4, 1934. Look at it, please. A. That is all right. I will take your word for it. 1083

Q. You knew that, didn't you? A. Yes.

Q. In April, May and June there had been three payments made at the time you filed what is now known as Government's Exhibit 33.

The Court: There were two payments, May and June.

Q. Government's Exhibit 33, consent to take bonds. A. May I look at that?

1084 Q. Yes, surely, go ahead. A. I recite the original amount of the mortgage, then I repeated the figures again. I see that.

Q. Then you place no significance whatsoever in the fact that this mortgage's consent reads for $650 and one year's interest? A. I place no significance in that.

Q. Nothing at all? A. No, sir.

Q. What did you mean when you said, "and one year's interest"? Was there a year's interest due on this amount or any amount that was owing to you by Mrs. Wilson? A. No, sir.

1082 Q. Then that is also a misstatement, isn't it, the one year's interest? A. Yes, that is right.

Q. Now, do you know how much the liens were on Mrs. Wilson's property? A. They were just estimated.

Q. About $8,000? A. I don't know. If that is what you have, probably that is so.

Q. Isn't it a matter of fact that the Government assessed the property at $16,000? A. Well, that assessor ought to be on trial with me, if they did.

Q. Do you know that to be the fact, that the assessment— A. I repeat, that he ought to be here with me if that is so.

1086 Q. Do you know that the assessed value on it was $16,000? A. No, I don't know that that house was worth much more than the first mortgage, if the first mortgage.

The Court: You lent the mortgage on that house, the third mortgage?

The Witness: No, second mortgage.

The Court: All right, second mortgage. If you knew that the house was not worth the

first mortgage, you still lent the second mort- 1087
gage?

The Witness: Not on the value of the property. Her husband was in business. He was a florist.

The Court: You figured the bond with the mortgage would make the mortgage good? Did you combine your bond with the mortgage?

The Witness: Yes, sir, I did.

Q. Do you know a Mr. Isadore Goldstein, an appraiser for the Home Loan? A. No, I don't 1088
know him, Mr. Scileppi.

Q. May I ask you to please look at this paper, the investigation and preliminary appraiser's report taken from the Home Loan file, and I ask you to look at that third figure there and see whether or not by looking at it it does not refresh your recollection that the property was assessed and appraised at $16,000?

Mr. Serri: If your Honor please,——

A. No, sir.

Q. That doesn't, does it? A. No, sir. 1089

The Court: Wait a minute.

Mr. Serri: We join——

Q. If that was so, if the property was appraised and assessed at $16,000— A. The property was assessed by the City at about $12,000. You have the bills here.

Q. What per cent. of the appraised value was

1090 the Home Loan giving to the home owners? A. They did not base their loans on a percentage of the assessed valuation.

Q. I said appraised valuation. A. Well, I cannot figure their appraisals.

Q. It was eighty per cent.? A. Of their appraisals, yes.

Q. Yes; so if they gave 80 per cent. of $16,000, there surely would have been enough money given by the Home Loan to take care of all the existing liens? A. The man that said that house was worth $16,000 ought to be alongside of me.

1091 The Court: Ask her first if she knew what the appraised valuation by the Government was.

The Witness: No, and I am shocked to hear what he is telling me now.

Q. You see the report, do you not? A. Yes, I see the report.

Q. That report was made on May 14, 1934. You see the report on it. A. I feel sorry for citizens if they are going to pay off those loans.

Q. Wait. We ought to have as few speeches as
1092 possible.

The Court: Let me ask: If they paid off your loan, you would feel sorry for citizens too if it wasn't due too?

The Witness: I did not mean to imply that. What I meant was, if they appraised that woman's house at $16,000——

Mr. Serri: Louder, please.

The Court: Please answer the question,

Madam. If you got $650 on your mortgage that you weren't entitled to you would still feel sorry? 1093

The Witness: I wouldn't have accepted it.

The Court: If they gave it to you you wouldn't have accepted it?

The Witness: It wasn't coming to me.

Q. Didn't you in any way assist in making up the figures at the time you made out the application as to what the outstanding liens were against the property? A. (No answer).

Q. Well, here, may I ask you to look at the application? You have written there $8,500 in your handwriting as the total amount of liens against the property, haven't you? A. Yes, I have. 1094

Q. That is correct, isn't it? A. That is the total of the figures written here, that is right.

Q. So from what you have now learned, that that property was appraised at $16,000 by the Home Owners' Loan appraiser and assessed, as you said, by the City at $12,000— A. Yes.

Q. (Continuing) —there would have been enough money, if a loan had been granted, to take care of all the existing liens? 1095

Mr. Serri: I object to that as argumentative.

The Court: If she cannot answer, she can say so.

A. The City's assessments are always excessive for taxing purposes. Any property owner that is in this room at this time knows that.

1096 Q. The City is dishonest in that respect, I take it? A. Yes, they are.

Mr. Serri: I object to that.

The Court: Ruled out.

The Witness: Your Honor, we have all the figures of the property here. Why not look at them?

The Court: If you will just answer questions, you will be better off. Mr. Scileppi asked you, assuming all those figures are correct,—the figures that are on that sheet——

The Witness: Yes.

1097 The Court: (Continuing) —on the appraisal, wouldn't the Government have loaned more than $8,500? If you can answer that, say so; if you cannot, say so.

The Witness: If a competent appraiser had appraised that house——

Q. Please do not ask me any more questions. A. I am not asking you. I am telling you.

Q. Please answer the question, if you can, without parrying with the Court's question. A. Will you repeat the question?

1098 The Court: From your experience—not do you know it is a fact in this case—but from your experience as a real estate person, would they have done what Mr. Scileppi is asking you they would have done?

Mr. Scileppi: Now put the question.

The Court: That long question I asked her.

(Reporter repeated the Court's question as

follows: ("Mr. Scileppi asked you, assuming 1099
all those figures are correct that are on that sheet, on the appraisal, wouldn't the Government have loaned more than $8,500? If you can answer that, say so; if you cannot, say so.")

The Court: Now, can you tell us from your experience whether that is so?

The Witness: From my experience a loan not exceeding $7,000 should have been made on that house.

The Court: That is not the question.

We will assume that the appraisal of the 1100
Government was $16,000, we will assume that the assessed valuation by the City is $12,000: In your experience as a real estate woman do you know whether or not the Government would lend $8,500 or more on that house?

Mr. Serri: I object to that question.

The Court: Take these figures into consideration, from your experience——

The Witness: I don't know. I don't know how they arrive at their appraisal.

Q. Regardless of how they arrived, eliminating 1101
that from your mind for the present, the fact is that that figure was arrived at——

Mr. Scileppi: I object to that.

Q. (Continuing) —that being so, and you know that the Home Loan Corporation would lend 80 per cent. of the appraised valuation set by their own appraisers, wouldn't there have been

1102 far more money than necessary, than the mere $8,500 you have specified in that statement?

Mr. Serri: I object to that question.

The Court: Sustained in that form.

Ask her the direct question, if she knew as a real estate woman if they loaned 80 per cent. of their assessed valuations.

Mr. Scileppi: I think she did.

Q. Did you know that? A. No, sir, I did not.

The Court: How did they arrive at their
1103 loans?

The Witness: Your Honor, I don't know. In almost every case I have been in there has been a deficit.

The Court: No, no, there must have been something. They must have taken their figures from somewhere, is that right?

The Witness: Yes.

The Court: Now, you were up there and you knew something about those loans, is that right?

The Witness: I did not know anything
1104 about their appraisal department or how they functioned there.

Q. Then there is very little you know about the Home Owners' Loan Corporation? A. I knew nothing about the Home Owners'.

Q. You had never been there? A. Yes, I was.

Q. Aside from the time you called—you were called to be questioned by Mr. Craven? A. I was up in a matter, I mean, in which there was

a difference of opinion as regards title. I was 1105
up two or three times on that matter.

Q. You were never up there on any other matter? A. I was never up there on business of any home owner.

Q. Were you ever asked to stay out of the offices of the Home Owners' Loan Corporation? A. I was not, never, Mr. Scileppi. It might be well to look at that picture——

Q. Did you know that this Wilson house had a newly installed oil heating plant in it, with all new galvanized plumbing? Did you know that? A. I did not know what her heating 1106
system was. I knew she had steam heat. I did not know whether it was oil or otherwise.

Q. You did not know all the plumbing was new galvanized plumbing? A. No, sir, I did not.

Q. And you say you are learning for the first time—you do not remember inserting that in the application which you made for Mrs. Wilson, do you? A. I don't know, but it was over two years ago. How would I remember that now?

Q. Did you know how much fire insurance they were carrying on the property? A. No, I did not. I estimated everything.

Q. If you put $15,000 in this application for 1107
the amount of fire insurance, were you merely estimating there too? A. Yes, I was. You may be sure there was no $15,000 fire insurance on that building.

Q. You were estimating? A. Yes.

Q. That was because you took into consideration the value of the house, is that it? A. Yes.

Q. You remember going to Mrs. Esther Dostis' house, don't you? A. I contacted the son-in-law in the matter.

1108 Q. Answer yes or no, if you can. A. Yes.

Q. That was over in Orchard Street, wasn't it? A. No, no.

Q. Never saw her in Orchard Street? A. Yes, I did, when he received the letter from the Home Loan that required her signature, he wanted her to sign it; and I told him if his mother-in-law had signed the original application she would have to sign that second paper, and it was then that he took me to Orchard Street.

Q. On how many different occasions did you see Mr. Hatchpoulos? A. Every time he got a
1109 letter from the Lincoln Savings Bank, he called me up.

Mr. Serri: I object.

Q. That was how often? A. Possibly three or four times.

Q. Do you remember the occasion when Mr. Hatchpoulos came down to Mr. Lick's office? A. Never in Mr. Lick's office.

Q. Whose office was he in? A. He met me downtown. I don't remember the man's office, but it was not an attorney. I mean, I was
1110 in there doing some business, and I telephoned him to come down and meet me there.

Q. And he met you in this particular office that you were doing this business, is that correct? A. Yes.

Q. Hadn't you communicated with him the day before? A. No; he had communicated with me. He telephoned me that he had another letter from the Lincoln Savings Bank.

Q. And you at that time knew that the Home

Owners' Loan Corporation was investigating? A. 1111
No, sir.

Q. Your activities? A. No, sir, not at that time. They had not investigated my activities at that time.

Q. Hadn't Mr. Hatchpoulos just received a letter from the Home Owners' Loan Corporation the day before? A. No, sir. The letter that he received, that he brought to me from the Lincoln Savings Bank. We have it here in court.

Q. You took up the receipt which you gave him? A. Yes, I gave him back his money.

Q. And tore it up? A. Yes. I probably did, 1112
because I don't seem to have it.

Q. And you told him if anybody made inquiry that he should say that you had sold him insurance? A. No, sir, I did not tell him that then.

Q. That was a pure fabrication on his part? A. No, I can explain.

Q. Please. A. Sometime later, possibly two weeks later, he called me up and said he had been summoned up to the Home Owners' Loan Corporation and questioned as to how he had met me. And he told me that he had to go back there and bring some papers, whatever papers 1113
he had in connection with his property, and he asked me then what—how should he tell them he met me, whether through this taxicab man or how. I said that, "You can tell them you met me through an insurance agent." I said that just offhand.

The Court: Why did you say that, if what you did was regular?

1114 The Witness: I considered it regular and I still do.

The Court: And at the time you told him that you considered it regular, did you?

The Witness: I just thoughtlessly said that over the telephone. I did not want to drag a lot of people into my business affairs and incriminate myself.

Q. When you told him to bring down all his papers, his deed and insurance papers— A. No, no.

1115 Q. Just a minute. I will ask the question, and if I am wrong, you please tell me. Wasn't that the occasion when you told him to bring down all his papers to the lawyer's office and when he got down, the only thing you took from him was the receipt? A. No, sir, that is not a fact.

The Court: Mr. Scileppi, what was the date of that conversation?

Mr. Scileppi: July 25th——

The Court: The conversation?

Mr. Scileppi: July 26, 1934.

1116 Q. Now, didn't you know when you took that receipt from Mr. Dostis—from Mr. Hatchpoulos, that he had all the other papers with him? A. I did not ask him for any papers. He did not show me any papers. He told——

Q. Didn't he ask you, "Aren't you going to continue to take care of this loan?" Did he or did he not? A. When I returned his $20, he asked me that, and I said, I told him, I could not hold off the bank forever; that he should make some

payment; that I had held them off for four 1117
months.

Q. Didn't you tell him then, Miss Kay, that you were going to keep on helping him just the same, but that you did not want any money; and that was the time that you told him, "If anybody comes around, tell him I was selling insurance to you"? A. No, there was no occasion for anything like that. I had not been called anywhere, and I did not know of any activity on the part of the Home Loan at that time. That occurred about two or three weeks later.

Q. Where is this taxicab man that brought you 1118
over there, do you know? A. I don't know his name. He lives in the section there. He lives about half a dozen blocks away.

Q. Did you use him very often? A. I didn't use him at all. I obtained a loan for his mother from the Home Title Company about seven years ago.

Q. You say that your sister did all the collections with respect to the Terrone matter, didn't you? A. Yes, sir, that is true.

Q. Would she keep the money or turn it over to you? A. She kept all the money. I owed her some money and I gave her that mortgage as col- 1119
lateral.

Q. You were not concerned at all as to what the amount was that was due? A. I never knew. Only at the time I turned it over to her, there was a balance due of a certain amount at that time, and I owed her some money and I gave her that mortgage as security.

Q. Was there $285 due on the mortgage? A. No, I had given the mortgage to her for the

1120 amount of, possibly, seven or eight hundred dollars. If you will look at the receipts, it goes back some years.

Q. Did you mean to tell us you gave this mortgage to your sister outright? A. Yes, I did. I did not assign it. I gave her the mortgage.

Q. Did you hear your sister testify she did not own and never owned it? A. I told her to say that because I did not want to bring the family in.

Q. Who are we going to believe?

Mr. Serri: There is no conflict.

1121 Q. (Continuing.) —as to who owns the mortgage?

Mr. Serri: Miss Kay owns it, always had owned it.

The Court: That doesn't—she doesn't say she owned it now.

Mr. Serri: And she simply handed the papers over to her sister because of some loan.

Q. Well, will you kindly tell me——

1122 Mr. Scileppi: She says that she owed her sister money and she gave her the mortgage and she herself said her sister owned the mortgage.

Mr. Serri: She didn't say she assigned it.

The Court: Did you give your sister this mortgage for a loan?

The Witness: I did, your Honor.

The Court: And that ended your loan to your sister, is that right?

The Witness: That is correct. 1123

The Court: And she became the owner of that mortgage, although you did not sign it over to her?

The Witness: That is correct.

The Court: Then you were not the owner from the moment you gave it to your sister?

The Witness: From that time on Mrs. Terrone made payments to my sister.

The Court: You were not the owner any more, is that right?

The Witness: That is right.

The Court: You heard your sister testify 1124
that in all these mortgages, where her name was used, she was the dummy for you?

The Witness: She did say that.

The Court: She wasn't a dummy in this one?

The Witness: No.

The Court: She owned it herself and did not realize it?

The Witness: It isn't that. I didn't want to bring my family into this and I told her not to make any particular implications as far as——

1125

By Mr. Scileppi:

Q. When did you tell her that? A. At the time she was called before the Grand Jury.

The Court: Well, Miss Kay, how would the truth of that situation hurt your sister? If she went to the Grand Jury and said, "I own this mortgage, my sister gave it to me

1126 because she owed me money", how would that hurt your sister? It was a legitimate transaction.

The Witness: It was. I didn't want to bring the family in this thing. I was in it. I thought that was bad enough, and I did not want her to be called down here.

The Court: You realize there was nothing illegitimate in that transaction between you and your sister?

The Witness: There was nothing in it, your Honor.

1127 By Mr. Scileppi:

Q. Did you know that Mrs. Terrone had receipts of papers similar to these in her home? A. Yes.

Q. On which there was the amount stated as the balance due on the mortgage? A. That I didn't know, no.

Q. You didn't see any of these receipts, did you? A. I did not, Mr. Scileppi.

Q. Nor did you ask about them? A. No.

Q. And did you ask Mrs. Terrone how much
1128 was due on the second mortgage? A. I don't remember whether I did or not.

Q. Well, was there any reason why you should not avail yourself of the information from the very people who could have given it to you, Mrs. Terrone or Mrs. Gregor? A. Or Mrs. who?

Q. Gregor, Miss Cohen. A. I could not have gotten it from my sister. She was in the hospital at that time.

Q. But you could have got it from Mrs. Ter-

rone? A. I asked her and she started to look for 1129
the receipts. I said, "Well, I will estimate it, just as I did in the Wilson matter."

Q. What at that time did you estimate to be the amount due on the second mortgage? A. I don't remember. You have the figures there.

The Court: $590.

Q. That was $590, according to your figures, is that correct? A. That was not the amount that was due.

Q. Did you make out the application for Mrs. Terrone? A. It is my recollection that I did. 1130

Q. How much did you put in the application as the amount due? A. I don't know. You have the figures there. You might tell us.

Q. This application was made out, and I am referring to Government's Exhibit 12 in evidence, on May 17, 1934. A. Well,——

Q. Do you recollect making out the application on that date? A. Yes,—well, not that day, but I recollect making it up.

Q. If you inserted in here as the amount then due and owing on your mortgage $450, was that correct? A. No, that was not. As a matter of 1131
fact, I don't know whether it was or not. I didn't have the mortgage. I didn't have the figures. I didn't know what the figures were.

Q. Then you filed this application, didn't you? You signed and filed this application? A. Mortgagee's consent?

Q. Yes, this mortgagee's consent. A. You notice how accurate I am that I recited——

1132 Q. No, no, please answer the question. We are noticing a lot of things. A. I recite here the original amount of the mortgage is $590 and she owed me $590.

Q. Please answer the question. Did you sign, file and sign the mortgagee's consent? A. Yes, I did do that.

Q. And you signed Edna Gregor's name to it, didn't you? A. Yes, I did.

Q. At the time you made out the application you inserted the sum of $450. That was on May 17, 1934. But on September 1, 1934, you made
1133. out the amount in the sum of $590 as due and owing on your mortgage, is that correct? A. Yes, according to those papers, I did that.

Q. This mortgagee's consent to take bonds, Government's Exhibit 9 in evidence, that was mailed to your home, wasn't it? A. I don't remember whether it was or not. They also had a custom to give the applicant mortgagee's consents at the time they gave him the application. I don't remember whether I got that through the mail or whether——

Q. This is Laura Terrone, 228 Bergen Street, Brooklyn, New York K2498. That is put in
1134 there with a typewriter, isn't it? A. Yes; then that must have——

Q. And then at the bottom the initials M. C. V. A. That must have come from the Home Office.

Q. And come to your home via mail? A. Yes.

Q. And then you filled it out? A. That is right.

Q. Since this trial has begun, you have found out there was only $285 due on the mortgage? A. Yes.

Q. I mean, according to your statement, is that 1135
correct? A. According to what I have heard here.

Q. You did not at that time know that there was only $285 due? A. I didn't know what was due.

Q. And Mrs. Terrone didn't tell you? A. She started to look for the receipts and I told her not to bother.

Q. Then you assumed it was around $450, is that right? A. That is the figure that I put in there.

Q. You had originally asked her for $50 for the services that you were going to render her? A. 1136
I never asked her for any money, Mr. Scileppi.

Q. You fixed a fee of $175 for the services to be rendered in connection with her husband? A. I did not fix that fee.

Q. Who fixed that fee? A. The attorney did. I had nothing to do with it. I took her there and she discussed the matter with him.

Q. Who was to pay that $175? A. She was to pay it.

Q. How? A. She said she hadn't the money, so we discussed it among ourselves, the three of us, and it was finally decided to add it to the amount of the balance of the mortgage. 1137

The Court: Let the Government pay it?

The Witness: Yes.

Q. Together with the $50? A. No, $50——

Q. That you were to get for your services, that was added in there too, wasn't it? A. No, Mr. Scileppi, I never said anything to the woman about charges.

1138 Q. Then it is true that when this application was made out you knew it was more than for the then existing amount of the mortgage? A. I estimated that. I did not know what the existing amount of the mortgage was.

Q. You stated a moment ago that you had inserted the amount of $175? A. Oh, yes, to that extent I did, yes.

Q. Only to that extent? A. Yes, sir; I did not know what the actual balance was. As a matter of fact, the original mortgage was $1,000, and I recite there $590.

1139 Q. Please answer the question only. You remember seeing Mr. Rudd on the stand here? A. Yes, I know Mr. Rudd.

Q. On how many occasions did you go to Mr. Rudd's office in connection with the Beyer loan? A. He telephoned me once.

Q. No, on how many occasions did you go to his office? A. Twice.

Q. On both occasions you went there because the loan was to close, didn't you? A. He had the file in his office to close, yes.

Q. And on both occasions the loan could not close? A. The first time, he offered me $50, and
1140 the second time $72.50.

Q. And it could not close because you would not take a reduction?

Mr. Serri: I object, if your Honor please, not material.

Q. That is right? A. I would not take $50 or $72.50 for $285 or more.

Mr. Serri: I move to strike it out as not material to any issue in this case. 1141

The Court: I will let it stand.

Q. But the first and second mortgagees had agreed to take a reduction, hadn't they? A. Not at that time, not yet.

Q. Didn't Mr. Rudd tell you, and in your presence didn't he write a letter to the Home Owners' Loan Corporation that the only reason the loan could not close was because you would not take a reduction on your mortgage? A. No, sir, that is not true.

1142

Q. And you remember Mr. Bradie, don't you? A. I was in his office at the time the loan closed.

Q. And Mr. Bradie finally convinced you to take a reduction on your third mortgage? A. He did not convince me. I went there prepared to close.

Mr. Serri: I object.

The Court: When your attorney objects—

Mr. Serri: Please, Miss Kay.

The Court (continuing): —please do not answer until I rule. I will sustain the objection to the question in that form. 1143

Q. You remember being in Mr. Rudd's office on the 4th of October, 1934, don't you? A. I have been in his office, but I don't know the date.

Q. You remember that? A. Not the date.

Q. May I please ask you to read this letter and tell me whether he did not dictate that letter in your presence? A. No, he did not dictate that

1144 in my presence. The first time I have seen it, Mr. Scileppi.

Mr. Serri: Please, Miss Kay, I want to object to all this line of questioning. A person who has a mortgage as she did, a third mortgage, has a perfect right to bargain as she pleases to get her money back; whether she wanted the entire amount or three or five dollars is not in issue here; outside of the issues.

The Court: I am taking it as part of her general cross examination to get the whole picture.

1145 Mr. Serri: I object. Exception.

The Court: You may have your exception.

Q. On the 30th of October, 1934, were you present when Mr. Rudd dictated this letter, saying that he could not close the loan because you would not take a reduction?

Mr. Serri: I object.

The Court: Strike out that part. Did you see that letter or hear it dictated? That is the question that should be asked.

1146 The Witness: I never saw this letter before.

The Court: You did not hear it dictated?

The Witness: No, your Honor.

Q. Those are the two occasions you were in Mr. Rudd's office, October 4th and 30th? A. I don't think so. We have something in my file that might refresh my memory.

Q. Did Mr. Rudd tell you that the only amount, the only amount necessary in order to close that

loan was a reduction of about $88 on your mort- 1147
gage? A. No, sir.

Mr. Serri: I object to that. Please, Miss Kay.

The Court: I will take that.

Mr. Serri: Exception.

A. (Continuing.) No, to the contrary, his letter there recites that all that is left for me is $72.50. That would have been a reduction of over $200, Mr. Scileppi. The letter that you have there.

Q. You got $200 when this loan finally closed? A. I know, but through my own efforts. 1148

Q. That was above the original amount awarded by the Government? A. But I prevailed upon the first mortgagee to take the cut.

Q. So you got the benefit of it in your third mortgage? A. Well, all right. Who should get the benefit?

Mr. Serri: If your Honor please, what——

Q. You had a contract with this woman to take half of whatever you could save her? A. Yes.

Q. So that finally, after prevailing upon the first mortgagee to take a cut, you were able to 1149
get $200 out of a total mortgage of $288, weren't you? A. After the work that I did, yes.

Mr. Serri: I object, your Honor. It is not material what she obtained on the third mortgage. That is a perfect legal right.

The Court: And in addition to that you got half of what you saved, of what you could save on the first mortgage?

1150 Mr. Serri: I object; she did not receive a penny, and a loss of $120 on her third mortgage.

The Court: You have a contract, haven't you?

The Witness: Well, for what it is worth. That woman didn't pay mortgages.

The Court: You had the contract, didn't you?

Mr. Serri: That is admitted.

The Witness: Yes.

The Court: And you intended to collect, if you could?

1151 The Witness: I had a swell chance.

The Court: Now.

The Witness: I am sorry.

By Mr. Scileppi:

Q. Exactly. A. Not because of the situation but because the woman was a very bad payer. She did not pay the first, she didn't pay the second, and she did not pay me. So could I collect on a piece of paper?

1152 The Court: Why did you take it, if you couldn't collect?

The Witness: I was an idiot. I did lots of things, I ran around with people, obligated myself.

Q. You didn't demand $250 off Mrs. Beyer to get the Home Loan? A. That was completely untrue.

Q. That is a pure fabrication also? A. Yes.

The Court: I will rule the question out in that form. 1153

Q. Your total mortgage with interest and everything was $285, your third mortgage on the Beyer property? A. I think that was the principal only.

Q. Our records indicate that the total amount due you at that time was $285. A. That was the total amount at the time that the application was filed, but considerable interest and other items accrued in the meanwhile.

Mr. Serri: If your Honor please, since there is no dispute as to the amount due on the third mortgage in the Beyer matter, why waste time on it? 1154

The Court: I will take the cross examination.

Q. You remember Mr. Fletcher, don't you, the man that wrote that agreement for you, between you and Mrs. Beyer? A. I wrote it.

Q. Oh, you wrote it? A. Yes.

Q. But he dictated it, didn't he? A. In part.

Q. You usually had a form of agreement? A. No. 1155

Q. Which you— A. I never had a form, Mr. Scileppi. I just had blank paper and a fountain pen, and I wrote at random.

Q. Look at this and see if this is the type of agreement, indicating Government's Exhibit 32, if this is not a form of agreement that you used in connection with these home owners? A. No. That is a form that I have used in connecton with

1156 deferred payments on mortgages, whether there was a second or first. It specifically recites, deferred payments.

Q. When you used that in connection with this particular case—may I have that paper a moment?—in connection with the Nellie R. Wilson case, it was purely an accident? A. No, in that particular case I had nothing to do with her application. The application was filed sometime after, Mr. Scileppi. We had not even considered the Home Loan at that time. She had been bothered by the Title Company about these taxes and she admitted I went up there innumerable
1157 times to intercede for her.

Mr. Scileppi: I object to what this witness believes Mrs. Wilson admitted.

The Witness: No, I heard her. It is not a question of what I believe.

Q. But you took the trouble to insert $40 on or about June 1, 1934. What was that for? A. Contacting the first mortgagee, or making of monthly payments on that, as I am doing now and always did do.

1158 Q. And the same with Redner, the Redner was a $40 item? A. Yes, sir.

Q. $40 was your usual charge for these services? A. Deferred payments.

Q. And you were, of course, not in any way connected with the Home Loan? A. Only a moral obligation to these people who had been kind enough to cooperate with me.

Q. It was a charitable effort on your part? A. No, Mr. Scileppi. It was merely, I felt obligated

to these first and second mortgagees to sort of play ball with them in holding off foreclosure. I tried to keep the thing alive. 1159

Q. You even spent money to send telegrams to the Home Loan? A. Yes, I was that much of an idiot too.

Q. But that wasn't moral obligations too? A. Yes.

Q. I show you these letters that have been introduced in evidence, addressed to the Home Owners' Loan Corporation. It has been admitted that you have written all of those letters? A. Oh, yes, we have never denied anything. I told Mr. Craven at the Home Loan I wrote the letters. 1160

Q. In addition to those letters, 20 or 25, how many others did you send? A. I guess you rounded them all up, all right.

Q. You know there are quite a number of other cases you have not been questioned about here, Miss Kay.

Mr. Serri: I object to that, if your Honor please.

The Witness: I am willing to answer that.

The Court: I will allow it. 1161

Mr. Serri: Exception.

Mr. Scileppi: I am going to question her about it soon.

The Court: I am going to take it, so you may take your exception.

Mr. Serri: Exception.

A. I noticed you had these people here in court. I was surprised you did not call them.

1162 Q. Then there are other cases? A. There are four or five. You had them sitting here for four or five days. You should have really called them.

Q. Thank you very much for your kind solicitation. You were contacting the Home Owners' Loan Corporation directly, weren't you? A. Through the mail.

Q. You were not writing to the home owner? A. No.

Q. I mean, this was no indication of any interest on your part that you were doing anything in connection with the Home Loan matter, was it? A. Oh, yes, as far as I felt obligated to the

1163 people that cooperated with me in holding off foreclosures.

Q. You were not writing to the people that held the first and second mortgages or to the owner; your letters were addressed to the Home Owners' Loan Corporation, weren't they? A. I wrote plenty of letters to the people that held the first and second mortgages. In addition to that, I made so many personal calls on them, which was even a greater amount of effort and work. I did not attach any value or significance to those letters or telegrams. I gave up evenings

1164 to do it, yes.

Q. And of course you were not interested in anything in connection with the Home Loan? A. Only in so far as I wanted to repay the kindnesses of these people that played ball with me in waiting.

The Court: Miss Kay, in these contracts that you had for reduction of the mortgages, you could not get any money unless Home

Loan closed, could you, because it all depended upon the Home Loan being made? 1165

The Witness: That is true, your Honor.

The Court: So that you had an interest of yours to serve in some of these cases, you wanted to earn this fee that you thought you were rightfully earning, is that right?

The Witness: Yes, but in many instances I refinanced these homes through private companies. They didn't need the Home Loan.

The Court: I am talking about the Home Loan. The theory was you could not get anything on these mortgage contracts you had unless Home Loan loaned the money, is that right? 1166

The Witness: That is correct.

Q. Do you remember going to Mr. Rabino's office? A. Yes, I have been there a number of times.

Q. Did you tell Mr. Rabino that Edna Gregor, that is, in connection with the Beyer matter, that she was in California and that if that foreclosure were instituted, that they would have to obtain service by publication? A. She was in the hospital and I probably told him she was in California. She was in the hospital, your Honor. We can substantiate that. She was in the hospital from June to September. 1167

The Court: If that were so, why not tell the truth about it, Miss Kay?

Mr. Scileppi: Pardon me?

The Court: All right, I withdraw the question.

1168 Mr. Scileppi: I did not hear.

The Court: Never mind. I withdraw the question.

Q. When you went to see Mr. Rabino, didn't Mr. Rabino tell you that the Home Owners' Loan had withdrawn their application? A. No, he did not tell me that.

Q. He did not? A. No.

Q. And didn't you tell Mr. Rabino— A. Well, what he told me, Mr. Scileppi, was that he was going to foreclose and cut me off.

1169 Q. And didn't you tell Mr. Rabino—by the way, is this the gentleman that you know as Mr. Rabino? A. Such a long time ago——

Q. Is he or is he not? A. No, I don't remember. If he says he is Mr. Rabino, he must be the man I saw.

Q. Didn't you say to Mr. Rabino at that time, when you were told that the Home Owners' Loan Corporation had withdrawn their loan, that "You need not worry, as I have connections and am positive I can have the loan reinstated"? A. No, Mr. Scileppi, I never said that.

Q. You never said that to Mr. Rabino? A. No;

1170 he was too important and intelligent a man for me to say that to him.

The Court: That would not be the only reason you would not say it?

The Witness: No, I never make misrepresentations, your Honor, never.

Q. Now, you remember Mr. Benemerito, is that right? A. Yes.

Q. She sits right there? A. Yes. 1171

Q. That is Mrs. Benemerito there (indicating)? A. Yes.

Q. You knew the kind of check you were taking from her when you charged her $50 for the Home Loan application?

Mr. Serri: I object to that.

The Court: Yes, I will sustain the objection.

Q. You charged the $50 for helping her with the Home Loan? A. Not with helping her for the Home Loan. There was no mention made of 1172 Home Loan.

Q. What was that charge for? A. To reduce the payments she was called upon to make to the first and second mortgagees.

Q. And you were going to take $50 to do that? A. Do you realize how many visits it takes and how much patience——

Q. That was your charge? A. I still get such charges, if I collect them. They promise to pay them.

Q. May I ask you, are you an attorney, also, in addition to being— A. No, I am not an 1173 attorney. I would not humble myself and run around the way I do; I would stay in my office and use the telephone.

Q. So the $50 you were taking from Mrs. Benemerito, that was only to help her reduce the payments she was to make to the first and second mortgagees? A. And to have the second mortgagee withhold his demands and not foreclose.

Q. In other words, you were not concerned

1174 with the fact whether Mrs. Benemerito ever received a loan or did not? A. There was no mention made of a loan at that time. It had nothing to do with a loan.

Mr. Serri: I object. At that time there was no consideration of a loan. The application was filed weeks after, when we had nothing to do with the matter.

Q. You failed to file the application for a loan in this case when Mr. Wood came over and made you give back the $50, didn't you? A. No, Mr.
1175 Scileppi.

Mr. Serri: I object to that.
The Court: I will allow that.
Mr. Serri: Exception.

Q. Isn't that why you failed to get through with the application? A. No, Mr. Scileppi. It was customary for me to file the application, if I did file one, at the time I made a visit to the applicant's home.

Q. How long did you keep that $50 in your
1176 possession? A. I believe I received it on the 5th or 6th of June.

Q. Yes. And it was turned over to Mr. Wood about the 11th.

Q. You had it practically a whole week in your pocket? A. Five or six days.

Q. As a matter of fact, you had deposited the check? A. Yes.

Q. To your account? A. Just as Mrs. Benemerito cleared my check, the one I returned.

Q. That is, as she deposited your $25 check, you deposited her $75 check? A. That is correct. 1177

Q. But you had $50 of Mrs. Benemerito's money? A. I intended to earn that money, and I had earned part of it by going to the insurance company, to the New York Life Insurance Company.

Q. And after Mr. Wood came down to you and took that money away from you, did you remonstrate——

Mr. Serri: I object to that; I object to that.

A. He had no trouble getting it. 1178

Mr. Serri: I object to that as immaterial. That is incorrect, taking money away.

The Court: No, she paid it.

Q. Paid it over to Mr. Wood. You did not do anything further in connection with reducing the mortgages, or the Home Loan, or anything at all in connection with her property? A. Mr. Wood told me he would not permit of any reduction of payment. There, therefore, was nothing for me to do.

Q. But you gave him the money? A. I gave it to him. He had no trouble getting it. 1179

Q. Yes, but Mrs. Benemerito had given you that money? A. Yes.

Q. And that was the money the City had given to her to support her children with?

Mr. Serri: I object. He has been harping on this time after time and time after time; that is absolutely unfair and I object.

1180 Q. Is this the check——

The Court: Gentlemen, the fact that it is a City check is a fact, but do not attach any more importance to it than if it was cash brought out of her pocket.

The Witness: Another thing, Mr. Scileppi——

Q. You knew——

Mr. Scileppi: May I ask your Honor to instruct this witness to refrain from making
1181 any speeches or making long answers?

The Court: Yes, you are better off. I cannot make rulings on what you say voluntarily.

The Witness: I realize that.

Q. Is this the check which you received from Mrs. Benemerito? A. Yes, that is the check. That is——

Q. At the time you deposited it, did you know where the check had come from?

Mr. Serri: I object, your Honor.

1182

A. Department of Finance——

Mr. Serri: Notwithstanding your Honor's instruction that it has nothing to do with it, he keeps on harping. I say that is highly prejudicial to the defendant, your Honor.

The Court: I do not think it is.

Mr. Serri: It is. Why does he keep it up, if it is not?

The Court: You keep repeating the re- 1183
mark that it is prejudicial.

Mr. Serri: I am not, but he is deliberately making it prejudicial. I don't want to move for a mistrial at this stage of the game, but another unfair effort like that, and I will demand a mistrial.

The Court: When we come to that, you may make it.

Mr. Serri: If you will just let it alone. If he will in fairness leave it alone——

The Court: You won't let me talk, you get so excited. The jury understands my 1184
instructions. I do not care if he asks ten quetsions, the jury, I know, are sensible enough to follow my instructions.

Q. Now, then,——

Mr. Scileppi: I will withdraw that last question about the check from the department of the City of New York.

Q. You drew an agreement for Mrs. Benemerito, did you not? A. Yes, I drew it.

Q. And you never filed it? A. No. You asked 1185
me if I drew the agreement, that is, the agreement between Mrs. Benemerito and myself.

Q. Yes. A. I never prepared an application. There was no mention made of a Home Loan application at that time.

Q. At the time you drew that agreement and you drew the other agreements, you knew, didn't you, that it was against the law to solicit any funds? A. The only agreement——

1186 Q. Just let me finish my question, please, and then may I please ask you to answer the question: You knew it was against the law to solicit any funds from any home owners in connection with Home Owners' loans? A. I only knew it was against the law to accept payment for the filing of an application or preparation of an application, but beyond that I did not know that there was any law. There are thousands of attorneys doing the very work I was doing and still doing it.

1187 Q. Weren't you using this method as a subterfuge in order to circumvent the law, so if anybody came across the receipt, it would not appear here that you were making your charges in connection with a Home Loan application? A. No, Mr. Scileppi. If that is true, then I still carry those around with me, and I am still doing business on that form. I have them right here with me.

Q. Tell us what cases you are doing—tell us in what cases—A. Don't worry, they are not Home Loan cases.

Q. Oh,——

1188 Mr. Serri: If your Honor please, I object.

A. (Continuing.) I was through with the Home Loan September, 1934. They were poison ivy to me then.

Q. I see. You did not collect any money from Mrs. Abrimonte, did you? A. No, sir, I did not. She still owes me some money she hasn't paid.

Q. She agreed to pay you $30 in connection with the application? A. Not in connection with the application.

Q. What was that in connection with? A. To hold off that foreclosure that was being threatened by the Title Company. 1189

Q. That $30 you were to get was simply to go over and exercise your influence with the Title Company and have them hold off, is that right? A. No, sir, there was more than that.

Q. What more was there than that? A. I went there a number of times. And then I told her she has to make them some payments; she was collecting $120 a month rent; she had a four-family house; I did not know what she was doing with the money.

Q. Never mind that. A. After I went there a number of times, I refused to go any more. I told her I had imposed upon those people, and they would not listen to me any more; that she would have to go down there and make some payments. 1190

Q. Do you say Mrs. Abrimonte owes you the $150? A. No.

Q. You do not? A. I don't want anything after all this.

Q. And Iovino, you had agreed to take $50 in connection with Iovino, in connection with the Home Loan? A. No, not in connection with a Home Loan. 1191

Q. Also in connection with foreclosures of the mortgagees? A. When I was sent there, he had already been foreclosed and there was a receiver in possession. I did not take any money. He did not offer any money, but I merely entered into a contract with him.

Q. For $100? A. Yes, to have the foreclosure held off and the receiver withdrawn.

1192 Q. And you were going to charge $100 to go in and have the foreclosure called off? A. And the receiver withdrawn.

Q. Did you know at that time his property had been foreclosed? A. Yes, sir, I have the foreclosure action with me.

Q. Did you know at that time the persons that were foreclosing? A. He gave me the foreclosure papers.

Q. Were you going to advance any money toward the payment of the arrears? A. No.

Q. No money whatsoever? A. No.

1193 Q. You were merely going to contact these people and talk to them, is that it? A. You don't accomplish that in one visit.

Q. But that is what you were going to do? A. Sometimes you don't accomplish——

Q. Whether it was one or a dozen visits, you were going to use your method? A. Yes.

Q. And your personality and influence? A. Yes, if I had it.

Q. But you had no influence with these people foreclosing, did you? A. No, I did not.

Q. You did not know who they were; you were just going to go up there and talk to them, you

1194 were going to act on behalf of the people who were being foreclosed? A. That is right.

Q. And you were charging them $100 for that? A. On paper, yes.

Q. On paper, that is right. A. Did you ever try to collect some of that paper, Mr. Scileppi?

Q. You remember Mr. Losee, don't you? A. Yes, I remember him well.

Q. Do you remember receiving a ten dollar check from Mr. Losee? A. Yes, I do, Mr. Scileppi.

Q. That was $10 he had sent you which you had formerly left with him? A. That is correct. 1195

Q. You left him a gratuity? A. I did.

Q. A sort of gift at the time the Redner affair closed? A. Well, he had been so patient with that thing, he had threatened to return it a dozen times, and I prevailed upon him to hold it, hold it up, and when I left his office, I did not know what he smoked, otherwise I would have left him cigars, and I left him a ten dollar bill.

Q. There your actions clearly were in connection with the closing of the Home Loan? A. Only with his patience for having held on to this for us, because if this file had come back, everything would have cracked up. 1196

Q. And you were interested in seeing to it that that particular loan closed, were you, or weren't you? A. Yes, because the Brooklyn Savings Bank had been very——

Q. I am asking you——

Mr. Serri: Please give her a chance——

A. (Continuing.) I would not let them down.

Mr. Serri (continuing): —to finish the answer. 1197

A. (Continuing.) Mr. Moffatt had been very decent to me in that matter. I knew I had to go back to him some other time on some other matters.

The Court: What were you making the $40 charge for in the Redner matter?

1198 The Witness: For the holding off of the foreclosure and waiving of payment.

By the Court:

Q. Some of them you charged half of what you could reduce and in some of them you charged just for holding off, right? A. Well, it depended upon the circumstances.

Q. Did you try to reduce this Redner mortgage? A. I not only did try, but I actually did.

Q. You did reduce the mortgage? A. Yes, sir.

Q. You didn't take any part of that reduction?

1199 A. No, and there was no agreement.

Q. No agreement on that? A. No.

Q. The $40, and so on, you were to get, no matter how much you reduced them? A. There was no mention made of reduction. I felt—if you will permit me to explain——

Q. In your agreement you say here, "For reduction of mortgage, $40"? A. It was for holding off of the foreclosure, any work I had to do in connection with the mortgage.

Q. Including reduction of the mortgage? A. Yes.

1200 Q. But you did not get half of the reduction in that case? A. No, there was no mention made of it. I didn't discuss it.

Q. Did you have a flat fee of $40 for all the work you might do in that work towards the mortgage? A. Yes.

Q. And then you went up to the Home Loan, is that right, to see if the Home Loan closed? A. No, I never went to the Home Loan——

Q. But you were there when you gave the $10?

A. No, that was to his office. They do business 1201
in their own offices.

Q. When you got that $40 from Redner, when was that, before the loan closed or after? A. No, when I first went in to him.

Q. Before the loan closed? A. Before the application was filed.

Q. So you did not care whether the loan closed or not, so far as your fee was concerned? A. That is correct.

Q. And after it closed you apparently gave Mr. Losee $10 for the closing of the loan which you had nothing to do with, that is the fact? A. I 1202
left him $10, yes.

By Mr. Scileppi:

Q. But you were not interested in whether the loan closed or not? A. Well, I was interested, because Mr. Moffatt of the Brooklyn Bank had been very decent to me, I thought, and I did not want to let him down.

The Court: What I meant was, she had no monetary interest.

1203

Q. Now, in all of these cases, the question of obtaining a reduction——

The Court: Is there a receipt for this?

Mr. Scileppi: Redner?

The Court: Yes.

The Witness: I don't deny having a receipt—I have always admitted receiving——

The Court: No, no. Did you give a receipt to Mrs. Redner?

1204 The Witness: I very likely did. However, I gave them what they asked for.

The Court: As I recall it, there is no receipt in evidence. Mr. Serri, there is no receipt in evidence in this Redner connection?

Mr. Serri: As far as I recall, no.

Mr. Scileppi: No.

Mr. Serri: We received the $40, but there is no written receipt.

Q. In all of these cases, the ultimate goal that you were aiming at was that the loan for which
1205 an application had either been made or which you had made for the home owner, was that that loan should close?

Mr. Serri: I object to that.

Q. (Continuing.) Wasn't it? A. No.

The Court: I will let her answer. You may have an exception.

A. (Continuing.) No.

Q. You were not interested then whether the
1206 loan closed or not? A. In many instances loans did not close, and I obtained loans from private agencies.

Q. I am not asking you that. I am asking you what the ultimate goal was as to all these cases? A. If the Home Loan did not come through, I could get other loans. There were other agencies conveniently located.

Q. Which ones? A. Serial Federal Savings & Loan, Nassau Savings & Loan, and I obtained a

lot of loans from the Dime Savings Bank. As long 1207
as the mortgagees would reduce the indebtedness and the loan came within the range of what the new institution would lend, I did not need the Home Loan, and I obtained them in many cases.

Q. Yes, so that in the obtaining of these reductions or the effort to obtain these reductions, you did not have in mind in all of these cases the fact that the loan should close, is that correct? You were endeavoring to see— A. No, the loan had to close.

Q. That is what I am asking you, the loan had to close? A. But if it did not come from the 1208
Home Loan, I could do it elsewhere.

Q. Then when you proceeded to do any work in connection with these reductions, it was with the fact in mind that you wanted the Home Loan to close, wasn't it?

Mr. Serri: I object.
The Court: Overruled.
Mr. Serri: Exception.

A. The owners had already assured me they had filed application and I had no reason to believe they wouldn't close, as a matter of fact, Mr. Scileppi. 1209

Q. In the Dostis case—give me a chance, please —in the Dostis case, you wrote to the Home Owners' Loan telling them they ought to hurry up and close and do something? A. Certainly——

Q. Wait a minute, yes or no? A. Yes.

Q. Now, then, in the Abrimonte case you wrote a letter on the 15th of August to the Home Owners' Loan, Mr. Sands, and you did so in behalf of Esther Dostis? A. Yes.

1210 Q. You asked him to come down? A. Yes, sir.

Q. In the same Abrimonte case, you wrote to Mr. Corsi of the Home Loan? A. Yes, sir.

Q. Then you wrote a letter in the Abrimonte case? A. It is very likely.

Q. And in the Terrone case you wrote several letters? A. If you want——

Q. Asking them to rush the loan through, didn't you? A. It was sad enough that that was necessary, to write after they had been pending a year or more.

Q. All these letters were addressed to the Home Loan? A. I have never denied writing them.

1211 Q. In the Sulfaro case you wrote a letter to the Home Loan? A. Yes, I believe I did.

Q. Then you wrote another—you wrote two other letters for John Sulfaro, one for John and one for Felicia Sulfaro, asking them to rush the Home Loan through? A. I did not think I was committing a crime, writing a letter.

Q. Please stop this. Please answer the question. A. I never denied——

Q. And in the Iovino case you wrote a letter to the Home Owners' Loan Corporation also, asking them to rush the loan through, to hurry up and

1212 close? A. Yes; if you have the letter, that must be so.

Q. And in the Redner case——

Mr. Serri: We have admitted writing all——

Mr. Scileppi: Please let me conduct this cross examination.

The Court: Let Mr. Scileppi——

Mr. Scileppi: I have taken enough concessions.

The Court: If you have any objections, make them in legal form. 1213

Mr. Serri: I object, your Honor, because it was already conceded we wrote all these letters.

The Court: I overrule the objection.

Mr. Serri: Exception.

Q. In the Redner case you sent a two-page letter, didn't you? A. I certainly must have sacrificed all evening to do that, because I am a slow——

Q. Of course, you say you had no interest in whether the loan closed or not? A. I had interest in so far as my obligations to the holders of the mortgage, the first mortgage, or the people that played along with me. 1214

Q. And in the Nellie Wilson case you wrote a letter on August 15th asking them to "Please help close the loan as quick as possible. I cannot hold off the Title Company any more, and they were starting a foreclosure." You wrote that letter, yet you had no interest whether this loan would close, this Wilson loan? A. In that particular case I had an interest, the money the woman owed me.

1215

Q. Then you sent a telegram on behalf of Salvatore Iovino? A. Yes, I believe I did.

Q. You paid for that, didn't you? A. Yes, foolishly I did. I should have sent——

Q. And of course you had no interest as to whether or not Mr. Iovino's loan would close or not? A. Of course I had an interest.

Q. How many letters did you write for Mrs. Sciortine to the Home Loan? A. I don't think

1216 I wrote any letters in that case. You see, Mrs. Sciortine came to me when the matter was already in Mr. Aronowitz' office. He could not close it and she came to me in the matter.

Q. How much of a reduction did you effect for her? A. Your figures ought to show that.

Q. I am asking you. A. I really don't remember. I really don't remember. I know at the time I discussed my fee with her, when the thing finally was concluded satisfactorily.

Q. Yes, satisfactorily, yes, go on. A. She came down with me and she said she would not give
1217 me more than, say, $50 immediately, and $25 a month.

Q. Then you say the matter had been in Mr. Meranus' hands when you were asked to participate in the closing of this Home Loan, is that correct? A. Yes, Mr. Scileppi——

Q. Now, please, we will get along here. We don't need such long answers. And then you stepped in? A. She came in with Mr. Meranus' letter in her hands.

Q. And through your efforts this Home Loan closed? A. Yes, through my efforts.

Q. Of course, you were not interested in whether
1218 that loan closed? A. I had nothing to do with it other than getting the people on the first and second mortgage together. I did not file the application. She came to me when the loan was ready to close and could not close. Mr. Meranus had had the file for several weeks and couldn't do a thing with it.

Q. Did you hear Mrs. Sciortine say she had to pay $400 odd in cash in order to close the loan? A. I did not see any money passed at that closing.

Q. Did you hear Mr. Meranus say he saw money passed at the closing? A. I didn't hear him say that. 1219

Q. Did you hear Mrs. Bertha Redner say that you had not saved her anything? A. You heard what Mr. Moffat said.

Mr. Serri: Please, Miss Kay. That is not correct. Mrs. Redner admitted reductions were made on the first mortgage.

The Witness: And on the second mortgage.

Mr. Scileppi: She did not admit anything of the kind. 1220

The Court: We won't get into any dispute there.

The Witness: Mr. Moffat testified to the contrary.

The Court: In that Redner case, the reduction of the mortgage was not in question at all. This lady says——

Mr. Serri: No, the Redner case, it was——

The Court: With regard to her fee——

Mr. Serri: I mean that she did work on reductions and did obtain them, and Moffatt so testified.

The Court (continuing)—this contract was 1221 not for that loan.

Mr. Serri: She did the work and probably expected to be paid for that.

Q. Now, you say that every lawyer was doing the same thing at that time? A. This building would not be large enough to house all the lawyers that have done the very work I have done.

1222 The Court: Suppose you name some of them to me? Put them on this record. I have heard you say that before.

The Witness: That is the truth.

The Court: You name the lawyers that you know of that are doing this business up at the Home Loan Corporation right on the record, and I will assure you that every one of them will be investigated.

Mr. Serri: I object.

The Witness: That is the truth.

Mr. Serri: Miss Kay, please. I object to
1223 your Honor's comment. She did not say any lawyers were doing work up at the Home Owners' Loan Corporation.

The Court: That is the only place in which we are interested.

Mr. Serri: Of course, she did not do it up there. She meant she has met other attorneys——

The Court: At the Home Owners' Loan?

The Witness: Not at the Home Owners' Loan, but for clients in Home Owners' Loan matters.

The Court: Please, you have made this
1224 rather clear. Do you know any lawyers that are doing this kind of work at the Home Owners' Loan Corporation?

The Witness: Not at the Home Owners' Loan Corporation. In their own offices for clients.

The Court: Private loans are different things.

The Witness: Not private loans, home loans.

Mr. Serri: But in their offices. 1225

The Court: I meant, not with the Home Loan Corporation.

The Witness: I mean with the Home Loan Corporation.

The Court: You name those lawyers.

The Witness: Do you suppose I would?

The Court: I am asking you to name them.

The Witness: Your Honor, there are hundreds of them that come up to the Home Loan offices every day to intercede for home owners.

1226

Mr. Serri: Since your Honor has asked the question, I am going to refer you to the case of Romano, where the lawyer sued for services and recovered for services. That is a matter of public knowledge, it is a matter of public record.

Mr. Scileppi: That is going beyond the pale.

The Court: Lawyers have a right to go to the Home Owners' Loan Corporation, and the statute, I will charge you, will tell you that with certain limitations. That clears this point exactly.

1227

Mr. Serri: No, no, if your Honor please—

The Court: That is my charge, and that is the way I am going to charge the jury.

Mr. Serri: I am not discussing the charge. You have asked for the names of lawyers, and I want to show that one Romano actually sued—278 N. Y. Supp. 986—and he recovered for similar services.

1228 Mr. Scileppi: That has nothing to do with this case.

Mr. Serri: And was allowed to recover by the Judge.

The Court: Now, Gentlemen, pay no attention to what Mr. Serri has said.

Mr. Scileppi: That is not true. That case was reversed.

Mr. Serri: Where is the reversal?

Mr. Scileppi: Well, there was a reversal.

The Court: Please, both of you.

Mr. Serri: Mr. Scileppi made a statement——

1229 The Court: You had no right to make the statement you made and, Mr. Scileppi, you had no right to make the statement you made, and both of you are good lawyers and you ought to know better.

Gentlemen, we are not interested in any other case but this one. Mr. Serri should not have referred to the Romano case at all. Now, I will go back and ask the same question:

You have given this jury to understand that you know many lawyers that work up

1230 at the Home Loan Corporation making contracts, as you have made?

Mr. Serri: Now, if your Honor pleases,—

The Court: Please do not interrupt me, Mr. Serri. I am putting this question.

Mr. Serri: And I want to object to the question on the ground that——

The Court: You will wait until I put it before you object. That is what you have said?

The Witness: You have misunderstood me; 1231
either that, or I have expressed myself poorly.

The Court: Please express yourself rightly. I will give you all the opportunity you want.

The Witness: What I meant to say or had in mind was that every lawyer in the City has been doing work identical to mine in behalf of home owners, possibly clients that they represented at the time of the purchase of properties, who came back to them, without their——

The Court: Identical to yours, you say?

The Witness: Yes.

1232

The Court: Now, you name these lawyers that you know who have done work identical to yours.

The Witness: I would not dare.

The Court: Do you know them?

The Witness: Yes, I do.

The Court: And you refuse at my request to name them?

The Witness: Yes, your Honor.

The Court: That is all.

By Mr. Scileppi:

1233

Q. Do you know Constaire Elmoray? A. Yes. I know him.

Q. Did you do any work in connection with the home loan application for Constaire Elmoray? A. I may have written a letter or two. I know I was down at the New York Title Company half a dozen times to get them to hold off foreclosure.

1234 Q. Do you know Anna Chevale? A. Yes, I know her.

Q. Did you do any work for Anna Chevale in connection with the home loan application? A. Not in connection with the home loan application. I didn't file it.

Q. In connection with— A. Merely asked the City Bank Farmers Trust Company, who held the first mortgage——

Q. Wasn't there an application filed in the Chevale matter? A. If there was, I had nothing to do with it. I came in at the tail end when she could not get together with the first and sec-
1235 ond mortgagees.

Q. Do you know a Paresi Fonda? A. Yes, I know her.

Q. Did you do any work for her in connection with a Home Loan application? A. No, not in connection with the Home Loan. Merely to prevail on the Nassau Savings Bank to take a loss thereof about $4,000.

Q. All these people had applications filed with the Home Loan for home loans? A. Yes.

Q. Do you know Esther Carson, do you know her? A. Yes, she is in court.

1236 Q. Did you file an application for her? A. No. I came in when the matter was in the closing attorney's office and could not close.

Q. Did you close the matter? A. I did.

Q. Do you know Leon Matteo? A. Yes, I know him. I have known him——

Q. Also in connection with Home Loan? A. I had nothing to do with the Home Loan. I helped him some time ago to stave off foreclosure, which he later paid me to do.

Q. Did this Home Loan close? A. I believe it 1237
did. I did not have a mortgage there. I just lent him a few dollars.

Q. You closed it? A. No, I did not close it.

Q. Do you know who closed it? A. No, I don't.

Q. Do you know Lucille Nelson? A. What was that name?

Q. Lucille Nelson. A. No, I never heard that name before.

Q. You remember the Oranto Paresi matter? A. Oh, yes, that is different.

Q. And Nelson is the party who had the first mortgage on the property? A. Yes, I met that 1238
lady at the closing.

Q. That is right, isn't it? A. At the Home Loan closing.

Q. You met her on several occasions? A. At the Home Loan closing, yes.

Q. That is where there was some question as to whether or not the loan would close for forty-five or forty-eight hundred, do you remember that? A. Yes, I do, Mr. Scileppi.

Q. And were you instrumental in having the loan raised from forty-five hundred to forty-eight hundred? A. Indirectly, yes.

Q. You had had a mortgage on the property 1239
owned by Oranto and Paresi, did you not? A. Yes.

Q. You were paid in full on that particular closing of your mortgage, weren't you? A. No, I was not, Mr. Scileppi.

Q. How much less? A. About $250, as I remember it now.

Q. Out of how much? A. I think there was

1240 eleven hundred and fifty or eleven hundred and seventy, something like that.

Q. According to your figures? A. I received $250——

Mr. Serri: Of course, your Honor understands I have an exception to all this line of questioning.

The Court: Yes.

Q. And do you know Angela Ricarano? A. Yes, I have seen her around here in court in the last few days.

1241

The Court: Pardon me, but it is understood Mr. Serri has an exception to every count that is not included in the indictment, that is, these items about which you are questioning.

Q. You have seen Angela Ricarano around here? A. Yes.

Q. Did you file an application for a Home Loan for her? A. No, sir.

Q. Did you do any work in connection with it?

1242 A. I went down to the Williamsburg Savings Bank two or three times to ask them not to foreclose. They happened to be one of Mr. Rabino's clients. He sent me over there.

Q. Did the Home Loan close? A. I don't know. I stepped out of the situation sometime in the latter part of December.

Q. Do you know Antoine Rosetti? A. I know him.

Q. Did you do any work in connection with

his Home Loan? A. No, sir. He came to my 1243
home after the loan was already approved and the second mortgage would not take the amount offered, and I visited that second mortgagee half a dozen times.

Q. Wait a minute. You said you did not do anything and then you begin telling me everything you did.

Mr. Serri: If your Honor please, Mr. Scileppi does not understand the plain statement. It had notihng to do——

The Witness: I did nothing in connection with the Home Loan. 1244

Q. Thank you, Miss Kay.

The Court: I wish you men would stop talking to one another, so we would get along better here.

The Witness: What I said was, Mr. Rosetti came to me when the matter was already in the closing attorney's offices, ready to close.

Q. I just asked, did you or did you not do anything in connection with the closing of that Home Loan? A. No, I contacted the second mortgagee to get him to take the necessary cut and he would not take it. 1245

Q. Is that now your answer, yes? A. No, not a thing in connection with Home Loan.

Q. Do you know Salvatore? A. Yes.

Q. Encatube Salvatore? A. Yes.

1246 Q. Did you do any work in connection with that Home Loan? A. No.

The Court: Yes or no?

Q. You did not? A. No, sir.

Q. Did you ever see these people? A. Yes, I saw them.

Q. When did you see them? A. I was sent there by the second mortgagee, a man that held the second mortgage. Dr. Curtis, an optician, sent me to them.

Q. Did that loan finally close? A. I don't
1247 know, Mr. Scileppi, I don't know.

Q. You said you did not do any work in connection with it? A. I contacted the first mortgagee, the Prudential Life Insurance Company. Whether I did anything as far as Home Loan was concerned, I doubt it, unless I might have written a letter; I don't know. But you see, I came in there when the loan was already approved and could not close on account of insufficient amount.

Q. You did not have much success then with the Salvatore matter? A. Nobody can do anything with the Prudential Life Insurance Com-
1248 pany or any insurance company. They want all that is coming to them, interest, taxes and everything else.

Mr. Scileppi: That is all.

Mr. Serri: That is all.

(Witness excused.)

Mr. Serri: Defendant rests.

HERMAN C. RABINO, called as a witness on behalf of the United States, in rebuttal, having 1249
been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. Mr. Rabino, you are an attorney and counselor-at-law, with your offices located at 2 Park Avenue, New York City? A. Yes, sir.

Q. How long have you been admitted to the practice of the profession of law? A. Twenty-three years.

Q. Do you remember some time around the 28th of November the defendant, Gertrude Kay, 1250
visiting your office? A. I do.

Q. Will you please tell me if you remember on how many occasions she visited your office? A. I think on two occasions.

Q. Do you remember having a conversation with her? A. Yes, sir.

Q. Will you please give us the conversation? A. She came there in the latter part of November with Mrs. Beyer, to speak to me about a loan which Mrs. Beyer was trying to get from the Home Loan Owners——

Q. Home Owners' Loan Corporation? A. Home Owners'. Loan Corporation. I received informa- 1251
tion previous to her visit——

The Court: No, no.

A. (Continuing.) I told her——

The Court: Tell us what was said.

A. (Continuing.) I told her——

1252 The Court: I should not have to tell you that, you are an attorney.

The Witness: I beg your pardon.

A. (Continuing.) I told her that I had heard that the loan had been cancelled because it had not been acted upon, because the parties could not get together with reference to lowering the various liens; in other words, there were more claims than there was money to loan.

She told me—I asked her what she came there for. She said she could straighten that out, she could reinstate the loan or have the loan rein-
1253 stated; and as to what her interest in the matter was, she said she represented a third mortgagee, told me, I think, the name was Gregor, told me that this person was a sister, and I asked her what she would do with reference to her loan, whether she would not reduce her lien somewhat to make this loan possible; my people, I represented an estate, they did not feel as if they wanted to reduce the first mortgage or the interest. She said no, she wanted all of her money; did not make any difference, she wanted the full amount; she had full power from her sister and
1254 her sister insisted on getting all her money.

She then told me I ought to try to prevail upon my people to have them take less than the full amount of the principal and interest because if I had to foreclose the property, there would be some expense, and I might have vacant property on my hands, and it would take money to fit it up; she told me in any event her sister lived in California and if I did have to foreclose, it would be necessary for me to serve by publication, which, she

reminded me, would be about a hundred dollars, 1255
in the way of foreclosure expenses.

The Court: That is so, isn't it?

The Witness: I knew that, but she reminded me of the fact, that it would cost about a hundred dollars to publish against an absentee defendant.

Q. Did she say whether or not she had any connection with the Home Loan? A. No, she didn't say she had. She said she could arrange to reinstate the loan with the Home Loan.

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The Court: Home Owners' Loan Corporation?

The Witness: Yes.

Q. Do you know a Mr. Rudd? A. Not personally. I had some telephone communications with him.

Q. And a Mr. Bradie? A. I met him once when we were closing the deal.

Q. Did either Mr. Rudd or Mr. Bradie communicate with you with respect to this closing matter? A. Mr. Bradie did. Mr. Rudd, I think 1257
it was through Mr. Rudd that I received information that the loan had been turned down because apparently the parties could not get together, and subsequently the matter came to me through Mr. Bradie. Mr. Bradie had either written me or advised me——

The Court: All right.

Mr. Scileppi: All right.

1258 Mr. Serri: No questions.

(Witness excused.)

Mr. Scileppi: The Government rests.

Mr. Serri: Defendant rests. I renew my motion on the same grounds as those stated at the close of the Government's case.

The Court: Same ruling.

Mr. Serri: With respect to each and every count of the indictment.

The Court: The requests to charge must be on my desk tomorrow morning.

Mr. Serri: I shall have them ready.

1259 The Court: Hand up any memorandum of law which you have, which you think will assist me in making the charge. Do not do what some lawyer did two weeks before, give it to me five minutes before charging the jury.

Gentlemen, ten-thirty tomorrow morning. I do not have to tell you not to talk about it. We will finally have the last word on it tomorrow and you will be sent out, and that is the time to talk about it.

(Adjourned to May 19, 1936, at 10:30 1260 A. M.)

Brooklyn, N. Y., May 19, 1936.

(Met pursuant to adjournment at 10:30 A. M.; present as before.)

Mr. Scileppi: If your Honor pleases, I appreciate the fact that both the Government

and the defendant have rested. I was going 1261
to ask your Honor's permission to introduce some evidence of a purely technical nature with regard to fees charged and allowed by the Corporation, and that is to ask the fees which the Corporation permitted to be charged, the customary and ordinary fees.

The Court: Will it be very short?

Mr. Scileppi: Yes.

The Court: Yes, I will permit it.

JACOB B. MENKES, called as a witness on behalf 1262
of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Scileppi:

Q. You are an employee of the Home Owners' Loan Corporation? A. I am.

Q. How long have you been such? A. For about two and a half years.

Q. From practically the inception? A. From the inception of the corporation.

Q. From the existence of the corporation? A. 1263
Yes.

Q. That is, in the New York office? A. That is right.

Q. What are your duties there? A. I am assistant district counsel, and my function is to supervise generally the legal work in connection with the closing of loans, to prevent the foreclosure of homes in the Metropolitan area.

Q. And as such, acting in that capacity, were

1264 you familiar with the fees permitted and customarily allowed by the Government, that is, the Home Owners' Loan Corporation, in connection with the various work to be done where applications for loans had been made? A. I am.

Q. Can you tell me what some of those fees are which the Government permitted? A. Well, we have a credit report fee, a fee for a fee appraisal.

Q. How much is the credit report fee? A. One dollar.

Q. Yes? A. Then we have what is known as a fee appraisal, a real estate appraisal, which is

1265 $7.50.

Q. Was that always $7.50? A. Always—at first it was $5, but we subsequently raised it to $7.50.

Q. That is, for appraising the property, is that correct? A. Yes, real estate appraisal.

Q. And the appraiser must submit a written report? A. That is right.

Q. A comprehensive report of everything he finds in connection with the property. With respect to the abstract of title does the Government fix a certain fee to be paid for the examination of title? A. We fix the fee and designate the company.

1266 Q. How much is the fee for the examination of title? A. $35 for the original certificate and one dollar for the necessary continuation of searches.

Q. Is there any variation where the title does not close? A. Yes, where the title does not close, we pay the company $15, if it is not a member of the Board of New York Title Underwriters, and $25 if it is a member of the New York Board of Title Underwriters.

Q. What other fees are permitted and allowed

by the Corporation? A. An inspection fee to determine whether or not the premises need reconditioning. 1267

Q. How much does that run into? A. Three dollars.

Q. And a man is sent out to do that work? A. That is right.

Q. Assigned by the Corporation? A. That is right.

Q. What else? A. Then we have the fee for a closing attorney, an attorney designated by the company, by the Home Owners' Loan Corporation, to complete the transaction in his office. 1268

Q. And contact various mortgagees, and so forth? A. Contact the mortgagees, make adjustments, and prepare all the legal and financial papers.

Q. How much is that fee? A. The fee today is $17.50.

Q. It had been less heretofore? A. That is right.

Q. What were the amounts that were originally paid to closing attorneys? A. For a short time after the inception of the Corporation's activities we paid five dollars; then we raised it to $7.50, then to $10, then to $15, and finally to $17.50. 1269

Q. In addition to the fees which you have mentioned, has it been customary for the Home Owners' Loan Corporation to authorize or permit other fees or charges to be made in connection with Home Loan applications? A. In the ordinary course of business there is no other service to be rendered, and so we have not been in the practice of authorizing any fees other than possibly a survey fee or a fee to an attorney for cleaning

1270 up defects in title, such as encroachments or other defects.

Q. Where the fee is allowed to the attorney to do this legal work, is that usually fixed by the Corporation? A. No, sir, because that is a private arrangement made between a person interested in the real property involved and the attorney doing legal work necessary.

Q. You say that that is allowed by the Corporation, however? A. That is allowed by the Corporation.

Q. In other words, if the Corporation is not
1271 cognizant of the fact, in connection with that title, it would not permit that work?

Mr. Serri: I object to that.

The Court: I sustain the objection. I don't understand. You had better put it so we will get the full meaning.

Q. May I make myself clear, Mr. Menkes? The Government, after an appraisal, would allow $50 of the appraised value of the property to be loaned on a mortgage? A. That is right.

Q. Sometimes less if the credit rating was not
1272 considered so good, is that correct? A. Yes.

Q. But they could obtain up to 80 per cent. of the amount of the appraisal? A. That is right.

Q. Now, then, out of this money which the Home Owners' Loan Corporation gave to the property owners would be paid various fees, is that correct? A. That is right.

Q. And it was to come out of this particular money? A. That is right.

Q. So that if any money was to be paid to an attorney for any work in connection with the cleaning up of a defect or perfecting of title, it was a fee that would come to the knowledge and attention of the Home Owners' Loan Corporation? A. If it was involved in the expenditure of fees. 1273

Q. What do you mean by that? A. I mean this, that assuming that it was work which was not ordinarily necessary to close a transaction, and we did not feel that the Corporation should make the expenditure, the borrower in most instances was not familiar with what was holding up his loan, we would have to call the borrower in and say, "Look here, you have a defect in title which we cannot cure for you, and we cannot undertake the cost of curing it, but we will cooperate with an attorney you hire, tell him what the problem is and assist him in going about the legal work necessary to clean up that title, but you will have to pay it". 1274

Q. And he could pay him out of moneys advanced by the Home Owners' Loan Corporation? A. In certain instances, yes.

Cross examination by Mr. Serri:

1275

Q. And in certain instances the borrower could pay out of his own money, if he had it? A. That is right.

Q. And all the work which you mentioned, with the exception of those special cases of the attorney, such as the appraisal of property, inspection of building, closing, those services and those fees were rendered by people employed by the Corporation, is that true? A. They were ren-

1276 dered by men not classified strictly as employees of the Corporation, but men classified by the Corporation as doing investigating work on a contract basis.

Q. Now, please let us not quibble on the term employed. They were hired? A. That is right.

Q. By the Corporation? A. That is right.

Re-direct examination by Mr. Scileppi:

Q. But they were not known as employees of the Corporation? A. No, sir, they were fee men working on a contract basis.

1277

(Witness excused.)

The Court: Now, Mr. Serri and Mr. Scileppi, summation, what do you want, what time do you want?

Mr. Serri: A reasonable time, your Honor.

The Court: Forty-five minutes?

Mr. Serri: Longer than that. I don't know really——

The Court: I have to limit this time. It is five after eleven. Supposing I allow you until twelve o'clock.

1278 Mr. Serri: No, that would not be time. I cannot——

The Court: I am going to limit you to that.

Mr. Serri: I, maybe, can get through in an hour, but I don't want to be limited to it; where you have a complicated series of transactions, where there is a lot of evidence, I cannot possibly do justice to it and be limited to one hour. I want at least the morning session.

The Court: Until one o'clock? 1279

Mr. Serri: Yes.

The Court: Oh, no, I won't allow you two hours to sum up.

Mr. Serri: I can do——

The Court: I am going to allow you until—how much time do you want?

Mr. Scileppi: Well, now, of course, that is hard to say.

The Court: You are going to take the same time he is?

Mr. Scileppi: I may be completed in twenty minutes, thirty minutes. 1280

The Court: I know——

Mr. Scileppi: Maybe fifty minutes, an hour, or maybe take longer.

Mr. Serri: It is hard to say precisely. I don't want to prolong it, I don't want to talk for the fun of it, but I do not like to be told that I must stop.

The Court: Something must be done about time.

Mr. Serri: I am willing to stop at that time, and if there are some things I have not covered, I would like to go on.

The Court: I am going to limit you to 1281 half past twelve. That is an hour and twenty minutes. I will warn you at quarter after that you have fifteen minutes to go; and then Mr. Scileppi.

Mr. Serri: If your Honor please, I do not think that is quite fair.

Mr. Scileppi: I won't take an hour.

The Court: I am allowing counsel for

1282 defendant an hour and twenty-five minutes to sum up.

Mr. Serri: I must duly record an exception to that, your Honor, as being an unfair restriction of the time to sum up.

The Court: I don't think so.

Mr. Serri: Exception.

The Court: And Mr. Scileppi, you may have an hour and twenty-five minutes too.

Mr. Scileppi: If I need it.

The Court: That is your maximum. You may take five minutes, if you want, but that is all you are going to get. Now, that means

1283 that I am giving Mr. Serri eighty-five minutes.

Mr. Serri: If your Honor pleases, may I have a little table over here, because there are so many things?

The Court: Surely; make yourself comfortable.

Mr. Serri: Time out while they are moving the table, Judge?

The Court: You had better leave me alone. You had about twenty-five minutes' time you weren't entitled to, and I did not say anything to you.

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(Mr. Serri summed up to the jury, during the course of which the following occurred:)

Mr. Scileppi: I am going to make an objection. It is not my custom to object or interfere or break into the closing address. I have never done it. I am going to make this exception, because Mr. Serri is talking about things which the Department does not

do. That is a deliberate misstatement of fact. 1285
There is no evidence in the record, and if Mr. Serri wants the information, for his information I could inform him of numerous instances where men, some of the most prominent attorneys in this city, have been indicted and brought to trial in connection with Home Loan violations.

I am going to take exception to those remarks.

The Court: Gentlemen, do not be guided by what either of these attorneys says to you with regard to other cases. We are not 1286
trying any other case but this. What the Department does in other cases or what they don't do, or what the District Attorney does, we are not concerned with, and I think you understand that. We are concerned only with this case.

(Mr. Serri continues his summation, during the course of which the following occurred:)

The Court: Mr. Serri, I must take exception to your statement of law on that. What every lawyer does is not legal, and nobody may take the presumption that it 1287
is. Every person must respect the law by himself and he cannot respect it the way somebody else respects it or let somebody else guide him. Laws are made for us all to respect, and if somebody else does not respect it, that gives no other person any privilege to show the same disrespect.

Mr. Serri: I did not argue——

The Court: I suggest that you adhere to

this case; and in talking over the cases, we are not concerned with what others do.

Mr. Serri: I am not talking about other cases. I am raising the question of credibility.

The Court: Do not get into any controversy with me. It is not pertinent to this issue what other lawyers did or they did not do.

Mr. Serri: Then I beg to note an exception to your Honor's ruling.

The Court: What did this girl do? That is the only thing that is pertinent. Take your exception.

Mr. Serri: I want to take an exception to that remark. On the issue of credibility, it is all of vital moment.

(Mr. Serri continues and concludes his summation to the jury.)

The Court: Gentlemen, we will take a recess until quarter after two. We will not have Mr. Scileppi sum up now and break the summation for lunch, but you may go now until quarter after two. Please do not discuss the case. Wait until you hear the charge before you speak to each other about it. That is the time.

(Recess until 2:15 P. M.)

(Met pursuant to recess at 2:15 P. M.; present as before.)

The Court: Mr. Scileppi, I gave Mr. Serri an hour and twenty-five minutes. A quarter of four your time is up.

(Mr. Scileppi sums up to the jury, during the course of which the following occurred:) 1291

Mr. Serri: I want to object to that. We have conceded nothing of the kind. Your indictment says we did certain things wilfully, feloniously, and so forth. We have conceded certain facts, but no violation of the laws charged by the indictment.

The Court: Well——

Mr. Serri: That is very important.

Mr. Scileppi: That is correct——

The Court: Mr. Scileppi——

Mr. Scileppi: That is correct. That is what I have—— 1292

The Court (continuing): —is stating the facts as proved and as admitted by her, as a concession. You may not agree with that. You will accept only what you believe is credible, draw your own inferences from the facts and wait until you get the law from me and apply the law to the facts as you find them. That is merely argument. If you agree with it, all right; if you don't you don't. That is all.

Mr. Scileppi: That is just what I have said. 1293

(Mr. Scileppi continues his summation, during the course of which the following occurred:)

Mr. Serri: I object, if your Honor please. That is an incorrect statement of facts. The defendant testified that her services were to see the mortgagees who were threatening foreclosure because of arrears of taxes.

The Court: Wait a minute, Mr. Serri:

1294 Let me make this plain, Gentlemen: You are not to interrupt any more when Mr. Scileppi is discussing the facts. Gentlemen, it is your recollection of the facts which controls at all times over Mr. Serri's, over Mr. Scileppi's and over my own. That is plain and simple. If there is any fact that either of these two lawyers discusses with you, with which you agree, you will accept it. If you do not agree with it, accept your own recollection, and that disposes of all the——

Mr. Serri: I want to except to your
1295 Honor's instructions, because it seems to me whenever at any time during a trial a misstatement is made, the only proper time to correct it is right then and there. I, except.

The Court: Mr. Reporter, you had better take down the balance of Mr. Scileppi's summation.

Mr. Scileppi: May I suggest——

The Court: No, I will have it taken down and then you may make your objections after the summation is over, Mr. Serri.

Mr. Serri: That is satisfactory so far as
1296 I am concerned so long as I am given an opportunity——

Mr. Scileppi: I was just going to say, if I was going to be continually interrupted, I would certainly require more time.

The Court: You are the judges of the facts and the only judges, Gentlemen.

Mr. Scileppi (continuing summation): Now, Gentlemen, so that we may understand ourselves, and I am sure there is no inten-

tion on my part to misstate any of the facts, 1297
I have in mind the very receipt, the very agreement to which I have referred just a moment ago, and it is known as Government's Exhibit 32 in evidence, and it is made out to Nellie R. Wilson, and it says, "The undersigned, Nellie R. Wilson, owner of property 3104 Farragut Road, engages Miss Kay to render services in contacting the first mortgagee and arranging deferred payments of arrears of interest, none; taxes, second, 1932; of 1933 and 1934; water, 1933 and 1934. For such services the undersigned agrees to pay 1298
Miss Kay $40 on or before June 1, 1934."

Now, so that we may come back to the point that I was driving home a moment ago, if she knew she could not charge for the application of the Home Loan, or to help that loan through,—and she knew that, she was using these subterfuges. Have I misstated a fact, Gentlemen? Has my statement of the fact been accurate to the word, to the letter?

And when you gentlemen go into your jury room, remember, and please remember, that they have brought here a statement showing 1299
the arrears in taxes on this property to be $535, and that on this statement, the Home Loan application, it states $700, and when you gentlemen go into the jury room, you figure out from that statement what the total amount of 1934 is. Has she put it in here, in this paper, herself? Take this statement, it is an exhibit, and see if it is not $702. And she knew about it when she made that

1300 statement in March of 1934, when she wrote this in her own handwriting and gave it to Nellie Wilson. Let us be through with these artifices and these clever methods of deception.

However, I have taken something a little bit out of turn. Now, much has been said about the bureaucratic methods, the amateur detectives, about the unfairness of the prosecution; capital has been made of the fact that the investigators hounded this defendant, Miss Kay, or the Kay Operating Company, or Gertrude Klein, or whatever alias she may
1301 have been known under, and much has been said with respect to this City check—that check that was given by the Child Welfare Board to Mrs. Benemerito.

Now, Gentlemen, let me assure you, as I did at the very outset of this case, that these investigators and agents, these officers and the representatives of the Government here before you, had no personal axes to grind; they had no prejudice, bias, nor animus against this defendant. We are here only in one capacity and that is to uphold the
1302 law, to prosecute offenders, bring them before the court of justice and present the evidence.

Gentlemen, that is all we have done in this case. It then becomes your duty as jurymen, as jurors of the fact, to pass upon the guilt or innocence, and I am sure, Gentlemen, that you will do that fairly, and I want to say now that I have observed you closely and you certainly have paid very keen and splen-

did attention to all the testimony and to 1303
all the witnesses, you have been very observing, you have been very patient, and in that respect I want to thank you, Gentlemen, because I cannot help but feel that having demonstrated the interest you have, that you can ultimately come to only one conclusion in this case, and that I shall discuss with you in a very short time.

Getting back again to the question of motive, to the question of intent, the question as to whether this defendant intended to commit a crime, there was that little incident 1304
in the Dostis case. She did not know Dostis. She did not know Hatchpoulos. She went after them and she wanted $40, and she got $20. And then some time later, as Hatchpoulos told you, she called him up. He had received a letter from the Home Loan—he mentioned Craven's name, it is my recollection,—and she told him to bring his papers, bring everything that he had, down to a certain lawyer's office—which he had forgotten—bring everything with him, and when he got down there, she was not interested in his deeds, she was not interested in any other 1305
paper, the only thing she was interested in was getting back that receipt and giving back the $20. And why? And why? In one breath they claim that they had the right to do this; in another breath they claim that even although they had the right in certain instances they did not charge enough. And then their actions which speak far louder and with more force and effect than the argu-

1306 ments adduced by her counsel, shows that she was furtive, that she was hiding, that she was scheming, that she intended to take away the receipt from this man, Hatchpoulos, and give him back his money; and not only that, but in order to throw off these amateur detectives that he referred to, she told Hatchpoulos, "Don't tell them how I met you; tell them that I used to sell you insurance."

And, Gentlemen, she tried to explain away that statement. Now, mind you, there is no denial of it, because you gentlemen can see, and anybody can see, that Hatchpoulos would
1307 have no interest in coming into this court and making a statement like that if it were not true.

What has he to gain? He is merely a witness here.

She tried to explain it. Oh, she said, a week after, or some time after, she says, there was some talk about the question of insurance, but there we have the picture, we have the conceded fact that the receipt is withdrawn, we have the conceded fact that the money is given back.

1308 Is there any question, Gentlemen, that there was a solicitation? Is there any question, Gentlemen, that there was a contract for $40? Is there any question in the Dostis case that $20 were actually received, and if they were, Gentlemen, as in this case, as in all the other cases, what was the ultimate goal, what was the barrier, what was the lane that she was treading down, except that it was in connection with these home loans?

Continuation of Government's Summation.

What interest would any property owner 1309
have in holding back on payments of interest, holding back on this or something else, if it was not for the fact that there was going to be a refunding of the debt, if it was not for the fact that there would be a Home Loan advanced by the Government, the situation that the Government perceived and understood when it enacted this wonderful piece of legislation, when in 1933 the Government decided to advance two billion dollars to help home owners in distress, to help the cream of this country, not the roving population, but men 1310
and women who were planted firmly in the soil, men and women who were raising families and who sought to protect their roofs over their heads? And along came the Government, realizing the exigencies existing then, realizing the crucial moment that was at hand, and advanced these several billions of dollars to help those people who were floundering, who were about to lose their homes. One of the greatest pieces of humanitarian legislation that has ever been enacted by this or any government at any time! 1311

Can it be denied? Is there any doubt about it? And it was the intention of the Government to help these people, and when it decided to help them, it wanted nobody to chisel in, it wanted nobody to creep in between the home owner and the Corporation. It did not intend that this should be an occasion for a harvesting or a picking, for people to come here and represent themselves

1312 as nit-wits or stupid persons or persons who did not know what they were doing. As she said herself, how stupid I was, how misguided I was in this respect or in that respect.

When we get a little further into this thing and analyze the juggling she did we will see whether she was stupid or clever, we will see whether she is that little lily which she has been painted to be, or whether she is the vulture we have found her to be, preying upon these poor people who had fallen by
1313 the wayside, who could not keep body and soul together.

Let us get a little further into this case. Now, then that Iovino transaction. When Iovino took the stand, he told about Kay coming to him; foreclosure had been started; he told about Kay soliciting him and wanting $100. He said it was in connection with the Home Loan and to help the loan. What is the good? How can you stop a foreclosure? Here is a man that wants his money, he is suing the property owner. Can you, by force of words or arguments, stop a man who has
1314 a preconceived notion that he is going to foreclose, and who has taken the steps to do it? What was the ultimate outlook there? Wasn't it with the hope of obtaining a loan and with that money paying off the various persons who had liens against the property? Wasn't that the thing they were looking to? What did she demand a hundred dollars for? It is conceded, they admitted it immediately, that they made a contract for a hundred dol-

lars, but on cross-examination it was pointed 1315
out, and very adroitly, that it was for the purpose of interceding and stopping the foreclosure, for the purpose of taking care of the lis pendens. I don't know whether any of you gentlemen has ever had any experience in life with respect to foreclosures, I do not know whether you have been mortgagees or mortgagors, but if you have, you can draw upon all the experience which you have had in your life to help you judge the merits of this case.

That is what you are called here for. 1316
When you are here, you are to exercise that same common sense and that same judgment which you exercise in your every-day lives, in your every walk of life. And then, Gentlemen, stop and think for a minute, stop for a moment and realize that here a demand had been made for a hundred dollars to try and stop a foreclosure. Was that the demand that had been made, or shall we take Mr. Iovino's word for it, that the contract was made for the purpose of helping the Home Loan and pushing the Home Loan through and getting it through faster? 1317

This Mr. Iovino, one of the men whom the Government intended to help with these Home Loans, and I want to say, Gentlemen, that there were no favorites, everybody had equal opportunity, everybody could make an application for a Home Loan, the machinery was set up for everybody, and set up, Gentlemen, for these human beings, made of flesh and bones and blood, that came here and testified, not phonograph records, not phonographs, or

1318 anything else, or automatons, as Mr. Serri has referred to them; they are not merely fixtures; they are human beings, made of flesh and blood and bones, as you and I, and they had feelings, and I say, Gentlemen, it is a travesty to refer to these people, unfortunate individuals, who have come here to testify, as phonograph records, as phonographs, and descriptions of that same type.

We found the same situation with respect to the Abrimonte case. In the Abrimonte case they conceded that they made a contract and they solicited $30. Gentlemen, that is 1319 my recollection of the testimony, that was not disputed, and it is my recollection that the defendant herself so testified, that with Abrimonte she asked him for $30. She says it was for one thing; Abrimonte says it was in connection with the Home Loan. When you take the case as a whole, you will see how that figure of $40 runs almost parallel throughout the case. You will see how it is in connection with the Home Loan through, in connection with the Home Loan activities; only the application, the flat fee was $40, and 1320 then on top of that we find she was to get fifty per cent. of whatever she could save or whatever people believed she could save; you will see that is something she tried to get in addition.

We found the same situation in the Sulfaro case. Sulfaro, she concededly took $25, got the receipt, and finally they introduced the receipt in evidence. We took a photostatic copy. Stop to reflect for a moment,

Gentlemen, and you will realize that the Government was really working on this case. We knew that she was endeavoring to get that receipt back. I made this statement in my opening address to you, and I told you, Gentlemen, then, and the proof has verified every statement that I have made, that she would try to get that receipt back and that she would try to return the money, and we anticipated it, and before we returned that receipt to Sulfaro we made a photostatic copy of it because we did not know whether we would ever see the original. You cannot blame Sulfaro. He gave this woman $25 three weeks before that, $25, supposedly, as it says on the receipt, to contact the second mortgagee. What did she contact? Did she? Bauersfeld was here. He testified that he had never seen the woman until he saw her in court today, never heard of her, did not know her, had nothing to do with her; but in evidence we have introduced a letter, Gentlemen, a letter which Bauersfeld sent to Sulfaro, on which she writes a note telling him to wait and be patient and do this and that. That was her contact with Bauersfeld, but she kept that $25 three weeks. If a person is threatening to foreclose and a person is really worried and concerned about it and gives somebody $25 to go over and do something about it, do you think that three weeks is a reasonable time to wait or an unreasonable time to wait?

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And then, taking that in the light of the other cases that we are concerned with here, can't you see that she never intended to pay

1324 that $25 to the second mortgagee, that that was her fee for helping in connection with this loan, that she thought maybe she could hold him off, and in the meantime push the loan through, contact whomever she knew, help it along, hold them off, and when the second mortgagee would see that the loan was coming through, he could be delayed somewhat more, and she would keep the $25. Did she help Sulfaro with the loan after she had to give back the $25? The answer is No.

1325 And the same thing is true in the Benemerito case. In the Benemerito case she helped fill out the application; she held the check for six days. When she had to give back the money to Wood, she lost all interest in that application.

Gentlemen, we have two cases here in which not only was there a solicitation, not only was there a contact, but there was a filing of a false application, and Mr. Serri in his argument to you directed his force and energy against what he termed the spearhead of the offensive here. He realized that that was a very important part of the Government's case.

1326 He realized that there the strength lay, and he tried with all his force, might and main, he tried with all the powers of oratory within him, with all the force of logic he possesses, and I may say at this time that Mr. Serri is considered a splendid orator and a splendid logician, and he has had many years' experience at the Bar, and I have had opportunities on certain occasions to observe him, and if on certain occasions you saw a witness

floundering, you can understand, Gentlemen, 1327
that through the very adroit handling and through the experience which Mr. Serri possesses, he was able to make some of these witnesses on occasions, and on minor occasions, appear as though they were saying something which did not sound in consonance with the general story which they had told before, but in those two cases the attempt is made to explain them away as though they were purely an accident, purely a mishap.

However, the attempt is directed along different lines. We find in the Terrone case that 1328
one moment the sister says, that is, Mrs. Gregor says, "I own no mortgages, I hold no mortgages, and I have no interest in any mortgages. Whatever mortgages were in my name were my sister's; she owned them or held them and she had them, and that is all there is to that," and then comes the defendant, and when all of a sudden she perceives that was all right for her sister to say she had no interest in them, now, then, she thought, "Well, if I say the same thing, maybe the jury won't know who owns the mortgages, and that will be a fine situation." So for the 1329
moment we arrive at the point where the defendant, although first it had been conceded that she owned the mortgages, conceded by her attorney during the direct examination of the defendant, conceded that she had filed the papers, comes on and endeavors to say that she did not own the mortgages, that she had given the mortgage to her sister; and then, while she is trying to say that, and her at-

1330 torney is jumping to his feet and insisting that the concession was true, that Edna Gregor's testimony was true, there was for a moment pandemonium; we were in a dilemma. We almost did not know who to believe, and I believe, Gentlemen, that the facts, in our moment of cooler judgment, in our moment of sober judgment, clearly indicate that Gregor had nothing to do with this mortgage; that it was really the defendant's mortgage; that she knew the amounts due. She admitted under cross examination that she kept accu-
1331 rate records, there wasn't anything haphazard about the way she did business. She knew how much money was owing her, how much was in arrears. And we find she had a mortgage of $285 on that property and we find that this defendant used the name of Edna Gregor, and she admits she signed Edna Gregor's name to it—I do not raise any question about that—that she filed the application for $595, and they say to you, Gentlemen, it is a mistake, we did not mean it,—confusion. Well, look, there is confusion here and confusion there, and there is confusion in the
1332 applications, therefore there is confusion here. While they are taking that stand and assuming that argument, they are forgetting that there had been a little negotiation, that the defendant had gone to Mrs. Terrone and told her that she would have to pay her lawyer $175. At first she wanted $50 from the Terrone woman to put through the application, to help it through, to make it go through faster, and then three or four days later, when

she found out that Mr. Terrone was in an institution for mental defectives, she said, "Oh, no, it will cost you $175 now." And how were they going to get it? They were going to add it on to the mortgage. But if you add $175 to $285, you still haven't got $590. So you can see she was putting in a little lump for herself. She was going to get all paid, and that money too; and in went the application for $590. There is no question about it, that transaction was had with Mrs. Terrone. There is no denial. Mrs. Terrone told you that on the stand, and the defendant endeavored to justify her stand in the matter by saying that it was the lawyer who was making that arrangement. If that is so, there was no mistake, there was no confusion about the amount for which that mortgagee's consent was filed, and that mortgagee's consent, Gentlemen, you can take and study and look at in your jury room. You will find that it is addressed to the Home Owners' Loan Corporation. You will find that it is signed by the mortgagee, you will find it is a matter directly concerning the mortgagee and the Home Owners' Loan Corporation, and if there is any money to be paid on that mortgage, she will get it, and she merely signs a consent that, as the Government was paying off in Home Loan bonds, that she would take the amount of bonds representing the amount which she specified in that claim.

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In due time the Court will read the law to you and you can then determine whether or not this is a case that clearly falls within the statute.

Continuation of Government's Summation.

1336 Didn't we have the same situation in the Wilson case? Oh, I could go on and on and talk about the Wilson case, how they tried there to explain away the fact that she had no knowledge as to what the amount was that was due. The moment she took that stand she stated that Mrs. Wilson paid with regularity and precision $25 a month and interest; we have a number of receipts which we introduced there, and you can see in writing, Gentlemen, you can compare the ones which she admitted, and the others brought in later, which she also stated on her cross examination that she signed, and you will see what the story is.

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We have introduced checks in evidence and the matter is so positively clear that on June 4, 1934, there was only $150 due on that mortgage. On September 4th or 5th, sometime in September of the same year,—oh, no, it was 1934,—she filed an application, a mortgagee's consent, rather, with the Home Owners' Loan, and stated that the amount that was due her was not $150 but $650. She had jumped $500 in the figures. Then she went on, trying to say, "Well, you know, they always cut down, and I did not know; they were offering me small amounts and they were giving me a little money, and I had a right to protect myself," but she had been paid every penny coming to her, she wasn't being continuously threatened, there was no cause of alarm as far as she was concerned; the payments were made with promptness and precision, $25 a month with interest, and

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sometime in September the last payment was made. 1339

So, to go into it a little further and deeper, we went into the question of appraised valuation. Now, can you imagine this person who is confused, this person who has said that there were many figures that were not correct, when I asked her what the assessed valuation was that the Home Loan appraiser had put on the property, she corrected me and she said, "The assessment is that which the City levies, and the City had assessed the property for $12,000. That is something I did not know." Then I asked her did she know what the appraised valuation was, and of course she expressed ignorance, and then when I told her what it was, she thought that somebody else ought to be on trial with her. I do not know whether to take that as a complete admission of her guilt in this matter or not, but whatever it was, it was a statement which you gentlemen heard and which you can take for what it is worth. 1340

If we take the Government's $16,000 valuation, with the total liens, obligations of the property, at $8,500, if we take the sum which I gave her, and take 80 per cent. of that, why, we would have almost $14,000 the Home Loan could have advanced; if we take the City's assessment for taxation, there would have been over $1,000 more than would have been needed in order to cover the obligations. Then what fear could she have had? What was the purpose of putting in the greater amount? Why did she have to increase that mortgage by 1341

1342 $500? Was Mrs. Wilson telling the truth? Was she truthful when she said that Kay told her to do it, that she could have a little money for herself, and so forth, and so on? You remember the rest of her testimony; I need not repeat it. There is no question about it, Gentlemen. These actions on her part were knowing and wilful; they were deliberate and they were intentional, and they were made with the sole and ultimate purpose of deceiving the Home Owners' Loan Corporation.

1343 You have heard a great deal about the Benemerito case, that woman who sits there, who gave that $75 check that has been referred to, and which is marked in evidence as Government's Exhibit 24, which you have before you. She told you the circumstances under which that check was given, and when the check was given she gave a receipt to Mrs. Benemerito, and the receipt, Gentlemen, is in evidence and you can have it and take it into the jury room with you. She says distinctly and clearly in the receipt, which is in the handwriting of the defendant, that it

1344 is paid for services rendered on account of New York Life Insurance Company arrears, paid for services rendered. This was on June 5th. The check had arrived only a few days before, usually sent out around the first of the month, and she took and deposited that check into her own account. Is there any testimony, Gentlemen, that any services had been rendered according to her own agreement?

Continuation of Government's Summation.

Is there any testimony on her part that 1345
at the time this was made she had rendered any services? We are finding no fault with that except, Gentlemen, that through these little things we read her intention, we read her method, we unfold a drama here that is open to all, and that is that that $50 was in connection with that Home Loan application which she helped to fill out and which was then not filed by her because she had to give back the $50 to Mr. Wood when Mr. Wood went down and questioned her and asked her what right she had to take money, and you 1316
will remember the Court asked her, "Why did you give the money back to Mr. Wood? It was Mrs. Benemerito's money. If you did receive it on account of services which you were going to render, work which you were going to do, why did you give it back, or give it back to the New York Life? Why not give it back to Mrs. Benemerito?"

You can understand, Gentlemen, I need not dwell on this point any too long, you can understand it right then and there, she was moved by that guilty knowledge which she had, she was covering up her tracks; it was 1347
another transaction she wanted to get behind her, and she did give back the $50, although Mr. Wood testified, and it is my recollection, that she had that check five or six days. Nobody contacted him or came to him, and he was in sole charge of the servicing of that mortgage, and if anybody was interested in what was going on, he was the man that would have been referred to in the event any

1348 discussion were to take place with reference to any adjustment on the mortgage. No, after that $50 was given, Gentlemen, given back, the defendant lost all her kindly interest, all of this interest that she demonstrated she had; she was not concerned any more after she had given back the $50.

Now, then, they are endeavoring to explain it this way: She said she was going to hold back the payment, as a matter of fact, she put something in the papers to that effect, that she was going to hold these payments back or do something. Wasn't that another
1349 subterfuge, another way of getting around the subject of making people, trying to make people believe that she was not transgressing any of the laws of the Home Owners' Loan Corporation? Of course, I am not going to dwell long on the Bertha Redner account nor on the Sciortine account. Both of them run in a similar vein. It is conceded she got the $40 from Bertha Redner. The application had already been filed, or she filed it for her, I am not sure at the moment, and Mr. Losee came along and told us how he had
1350 found $10 in an envelope, and in that envelope was a card, Kay Operating Company, and after he got the $10, he mailed the check back to the May Operating Company, at 1904 Foster Avenue, and finally the check was endorsed, "G. Klein". This transaction was admitted. You may take that check into your jury room and wonder why this defendant was leaving ten dollar checks around. We have the evidence that it was left with Mr.

Losee. You may wonder, I am wondering, 1351
whether or not it had not been done before, or with whom, but I think, Gentlemen, it is rather significant that we find this defendant leaving checks around in a situation where she has no interest, as she said time and time again, in the closing of the Home Loan, no interest in the ultimate closing of the loan; the only interest she had was in trying to cut down the mortgages, trying to make the situation fit so that the amount which the Home Loan would give would have covered the amount of the liens which were existing 1352
against the property at that time.

I take that situation, Gentlemen, as very significant, and it leaves you with a great deal of speculation, particularly when Mr. Moffatt came here at their request and testified that it was the custom, that they used to have the Home Loan closing attorneys, call up, negotiate, contact and arrange for the adjustment of the situation. That was done so that Home Loans could close, and when I asked him to mention the name of any other person who had interceded on behalf of a mortgagor, that is, institution, in 1353
connection with a Home Loan closing, he could not remember of one, and then I asked him, "You are a very busy man and you have a great deal of work to do, and you see a great many people," and he replied, "Yes, that is all true," and he could not remember, but yet, out of the throng, stands this Gertrude Kay or Gertrude Klein, whom he remembered had done some work in the negotiations.

Continuation of Government's Summation.

1354 Now, Gentlemen, if she got $40 for any negotiation whatsoever in that Redner case, she has committed a violation according to the Government's interpretation of the law; she had no right to contact or solicit any funds or any amount of money in connection with any services to be rendered where a Home Loan closing was involved. That is something——

Mr. Serri: If your Honor please, matters of law should be left to the Court and not to the District Attorney.

1355 The Court: That is right, and I will instruct you shortly, Gentlemen. I think I have made it very plain that anything these attorneys say as to the law and facts: You are the sole judges of the facts, and I am the sole judge of the law. If my law agrees with theirs, take it; if it does not, take my law.

Mr. Scileppi: I am merely reading to you that which we have alleged in the indictment, that which we have charged this defendant with.

Let us go a point further: Mrs. Redner told a story of how the second mortgagee
1356 would not accept the amounts which she endeavored to have him accept, and finally, in order to effectuate closing, in order to consummate the transaction, it became necessary for her to give an assignment of rents to the second mortgagee so that the loan would close. In other words, there was not enough money which the Government gave; she had to make payments out of her own pocket to the first mortgagee so that the loan could close;

and in the ultimate analysis there was no 1357
actual saving or actual reduction, and therefore we can see clearly and distinctly that the defendant's actions in connection with the Redner case as in connection with the others, were in order to do that which she had contracted to do, and that is to push that loan through, to collect a fee in connection with the Home Loan.

Sciortine, there was a big dispute. Gentlemen, here is the check, it is in evidence and admitted and readmitted. The original charge there was $300 and she got $25 and $25 and 1358
$25, and Mrs. Sciortine said it became necessary for her, in order to satisfy the second mortgagee, to give $400 in cash, and Mr. Meranus, the closing attorney, remembered that a cash payment had been made to the second mortgagee at the time of the closing in order to close the loan.

Now, Gentlemen, was her interest only in connection with the reduction? When we analyze the situation as a whole, wasn't she guided, wasn't she aiming only at one thing? Need I again refer to all these letters, and we have only a mere partial number of them? 1359
They are all addressed to the Home Loan, all with the same plaint, all in the same tone, all pleading to rush, rush and rush, a misrepresentation in some of those letters, as you can see by reading yourself, urging the Home Loan to take action to help. Isn't this the final give-away as to what her plans were, going to these people to get an agreement to decrease the existing liens then, and

1360 charging a direct fee for her services? And then we have the little typewriter; we did not have to find the typewriter, Gentlemen. Here is the story that came off the typewriter, and it is in those letters, and some were written in her own hand, and there are even telegrams there, which she conceded, and admittedly conceded, that she had paid for, urging action on the Home Owners' Loan Corporation, to hurry up, to speed up, only in the cases in which she was interested, only in the cases in which she was getting a
1361 fee, only in the cases in which she might earn some money, in which she would profit and fatten upon these poor home owners in distress, these people whose roofs were wobbling over their heads.

Need I refer to that again, Gentlemen? They are there for your observation. You may take them into the jury room and read Them, as all of the other exhibits in this case.

Gentlemen, the Government is about to close its case. We have presented the evidence in connection with every count that is being submitted to you for your considera-
1362 tion, and it is the contention of the Government here that the evidence that has been presented is of sufficient weight, and of sufficient strength, that it would warrant a convicition of this defendant at your hands. I am going to ask you Gentlemen to render a verdict of guilty against this defendant. I am going to ask you to do it so this town, this State, and, yea, the Nation, may know that this law is not a dead-letter law.

Continuation of Government's Summation.

Gentlemen, by your verdict you shall vitalize that law, you shall give it life, and it shall be a standing memorial, both near and far, that the laws of the United States must be respected; that the Home Owners' Loan Corporation was not created so that the home owners might be mulcted and victimized by defendants of this type; so that a true and just verdict may be rendered in this case and that justice shall not be defeated. 1363

Mr. Serri: The defendant objects to the expression in the summing up of the Assistant District Attorney of the aliases she may have been known under. There is no proof of any alias of any kind ever being used by the defendant, she is known as Miss Kay, Gertrude Klein and her Operating Company. 1364

Defendant further objects to the statement of the District Attorney that the defendant went after Dostis and her son-in-law. There is no such proof in the evidence. The son-in-law himself conceded——

The Court: Do not repeat the evidence. You say that there is no proof and you may take your exception, but don't in your objection repeat what the evidence is because I won't permit you to. Now, you are trying to sum up again. 1365

Mr. Serri: No.

The Court: I will permit you to state on the record what you think the evidence is that he should not have quoted, and stop.

Mr. Serri: Defendant objects to the statement that she went after Dostis and the

1366 son-in-law; that there is no evidence in the record to that effect. The defendant objects to the term, the use of the term, by the Assistant, of a vulture as applying to this defendant, as being an absolutely unwarranted expression by this evidence.

I object to the statement with reference to Benemerito, that there was—the Benemerito count. There was no testimony that any services had been rendered by the defendant on June 5, 1936. Where is the testimony——

1367 The Court: Don't repeat. I told you, don't repeat the testimony. You make your objection.

Mr. Serri: All right.

The Court: You make objection to the testimony which you think he quoted, and stop there.

Mr. Serri: I further object with reference to the two counts relating to false statements to the expression, "fraud and deception, and to deceive the Home Owners' Loan Corporation," on the ground that the very charge in the indictment with reference to

1368 those two false statements does not claim any fraud or deceit with respect to the Home Owners' Loan Corporation.

With reference to the Redner account, the defendant objects to the statement of the District Attorney as being absolutely unsupported by the evidence, that there was no actual reduction in the Redner case, when the closing statement shows three hundred—

Mr. Scileppi: Wait——

The Court: You are getting into the evi- 1369
dence. I won't permit you to do that.

Mr. Serri: That is all.

Mr. Scileppi: May I call your Honor's attention to the fact, this morning counsel himself referred to the defendant as a vulture.

Mr. Serri: I object to that. I did nothing of the kind. I said you were trying to paint such a picture.

The Court: Wait. I have been very patient with both of you. Please. Now, Gentlemen, you have heard these objections 1370
by the attorney for the defendant. After you hear my charge, I will clarify all those objections, those that I think need to be clarified; those that I do not clarify in my charge, you may have a general exception to.

(The Court thereupon charged the jury as follows:)

Charge to Jury.

ABRUZZO, *D. J.*:

Gentlemen of the Jury, I am going to try to 1371
make my charge to you as simple as I can, so that you will understand what you are to determine in this case.

This defendant is named in the indictment as Gertrude Kay, alias Gertrude Klein, and on the stand she stated her name as Gertrude Klein, and she is charged with many counts, and I am going to read two or three of them as samples

1372 of the rest, because I do not think I should burden you with reading all the counts.

We will take the first count of the indictment: "That Gertrude Kay, alias Gertrude Klein, hereinafter referred to as the defendant, heretofore, to wit: On or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this court, did then and there unlawfully, knowingly, wilfully and felononiously solicit from one Esther Dostis a charge of forty ($40.00) dollars; that the said
1373 Esther Dostis, as the defendant well knew, was a person applying to Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Corporation Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

1374 "And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said charge which was so solicited by said defendant, Gertrude Kay, alias Gertrude Klein, from the said Esther Dostis, as aforesaid, was in connection with the said loan to the said Esther Dostis from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, Gertrude Kay, alias Gertrude Klein, to the said Esther Dostis,

in connection with the said loan; that the said 1375
charge so solicited as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, U. S. Code, Section 1467e)."

That is the first count on the Dostis matter.

The second count on the Dostis matter is that:

"The Grand Jurors aforesaid on their oaths 1376
aforesaid do further present that Gertrude Kay, alias Gertrude Klein, hereinafter referred to as the defendant, heretofore, to wit: On or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern. District of New York, and within the jurisdiction of this court, did then and there unlawfully, knowingly, wilfully and feloniously contract with one Esther Dostis for the payment to the said defendant Gertrude Kay, alias Gertrude Klein, by the said Esther Dostis of a charge of forty ($40.00) dollars; that the said Esther Dostis, as the defendant well knew, was a person 1377
applying to the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Corporation Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in

1378 the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York.

"And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the said contract for the said charge was made as aforesaid in connection with the said loan to the said Esther Dostis from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, Gertrude Kay, alias Gertrude Klein, to the said Esther Dostis, in connection with the said loan, that the said contract for said charge made as aforesaid was not for an ordinary charge
1379 or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, U. S. Code, Section 1467e)." That is the second count.

And the third count is:

"And the Grand Jurors aforesaid on their oaths aforesaid do further present and say that the said Gertrude Kay, alias Gertrude Klein, hereinafter referred to as the defendant, heretofore,
1380 to wit: On or about the 26th day of July, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this court, did then and there unlawfully, knowingly, wilfully and feloniously receive from one Esther Dostis the sum of twenty ($20.00) dollars; that the said Esther Dostis, as the defendant well knew, was a person applying to the Home Owners'

Loan Corporation, a corporation organized and existing under and by virtue of an act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Corporation Act of 1933, as amended, for a loan on certain property owned and occupied by the said Esther Dostis as her home and located at premises known and described as 2289 Coney Island Avenue, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York. 1381

"And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that the sum of twenty ($20.00) dollars received as aforesaid by the defendant, Gertrude Kay, alias Gertrude Klein, from the said Esther Dostis, was in connection with the said loan to the said Esther Dostis from Home Owners' Loan Corporation, and was a payment on account of a charge made for all services rendered and to be rendered by the said defendant, Gertrude Kay, alias Gertrude Klein, to the said Esther Dostis in connection with the said loan; that the said payment made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like services; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America (Title 12, U. S. Code, Section 1467e)." 1382 1383

Gentlemen, I have read those three counts so that you will have an idea of what the other counts are, and I will not read the other counts.

1384 There are twenty of them, but I will refer to them generally. That is the form of the language of the counts, even if I read them to you. So let us see if we cannot say it this way: That count No. 1 charges in general and in substance unlawful solicitation on the defendant's part of Esther Dostis; the second count, unlawfully contracting for the sum of $40; the third count, receiving the sum of $20. That is the substance.

Count 4 in the Terrone matter charges unlawfully soliciting $50, as I read the count before, and all these are substantially the same, Gentle-
1385 men, but there is a new one in the Terrone matter, which I will read to you, and that is count 5 with regard to the false statement.

"And the Grand Jurors aforesaid on their oaths aforesaid do further present and say that Gertrude Kay, alias Gertrude Klein, hereinafter referred to as the defendant, heretofore, to wit: On or about the 4th day of September, 1934, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within the jurisdiction of this court, for the purpose of influencing the actions of the Home Own-
1386 ers' Corporation, a corporation organized and existing under and by virtue of an act of Congress enacted June 13, 1933, and amended April 27, 1934, entitled and known as the Home Owners' Loan Act of 1933 as amended, upon an application for a loan under said Home Owners' Loan Act on property located at 228 Bergen Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, filed with the said Home Owners' Loan Corporation by

the said Laura Terrone and Dominick Terrone, said loan being for the purpose, among others, of refunding an indebtedness to said defendant, Gertrude Kay, alias Gertrude Klein, secured by a mortgage held and owned by said defendant on the said premises in the name of one Edna Gregor, did then and there in a certain instrument known as Home Owners' Loan Corporation Form No. 2, revised sixth month, twelfth day, 1934, dated September 4, 1934, and filed with the said Home Owners' Loan Corporation, unlawfully, knowingly, wilfully and feloniously make to the said Home Owners' Loan Corporation a certain false statement in writing, to wit:"—and you have that writing in evidence, in which she said that the total amount of her mortgage was $590. 1387 1388

"And the Grand Jurors aforesaid upon their oaths aforesaid do further present and say that in truth and in fact, as the defendant, Gertrude Kay, alias Gertrude Klein, well knew, there was not due to the defendant on said day and date last above mentioned, to wit, the 4th day of September, 1934, on the mortgage held by the said defendant, Gertrude Kay, alias Gertrude Klein, on the premises aforesaid, to wit, 228 Bergen Street, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, the sum of $590; but that in truth and in fact there was due to the said defendant, Gertrude Kay, alias Gertrude Klein, the sum of $285 as the said defendant then and there well knew; that the defendant, Gertrude Kay, alias Gertrude Klein, then and there well knew such statement as to the amount that defendant claimed was an indebtedness, as so stated aforesaid, to be false, against the peace and dignity of the United 1389

States of America and contrary to the form in such case made and provided. (Title 12, U. S. Code, Section 1467a)."

The sixth count was dismissed, so we go to the seventh count, the Beyer count, and that is unlawful solicitation, like the count in the Dostis case, of $250; and the eighth count was unlawfully contracting for $250, as in the Dostis count.

Counts 9 and 10: 10 was stricken out, leaving 9 in the Sulfaro case, unlawfully charging $25, in the same form as I read to you before in the Dostis matter.

Liberata Benemerito: The eleventh count is unlawfully soliciting $50; the twelfth count, unlawfully charging $50, as you heard read in the Dostis count.

Nellie R. Wilson: The thirteenth count is unlawfully soliciting $40, and the fourteenth count unlawfully contracting for $40, and the fifteenth count is the count with respect to falsification of the amount of the mortgage in the application, just like the count that I read to you in this Terrone section of the indictment. This count No. 15 in the Wilson case is the same as count 5 in the Terrone matter, excepting that the facts are a little different, in that the property was located at 3104 Farragut Road. The amount that was stated in the application filed by the defendant was named as $650, when the Grand Jurors say that in truth and in fact she knew the amount due her was $150.

The sixteenth count was dismissed. So you will discharge that count from your considerations.

The seventeenth count, the Abrimonte matter, 1393
is unlawful solicitation of $30; and the eighteenth count in the same matter of Abrimonte is unlawfully contracting for $30, as I read to you in the Dostis matter.

The nineteenth and twentieth counts are the Iovino counts. The nineteenth count is unlawful solicitation; the twentieth count is unlawfully contracting, each for a hundred dollars.

The twenty-first and twenty-second counts, the Redner counts: The twenty-first was unlawfully solicitation of $40; and the twenty-second was unlawfully receiving a forty dollar fee. That is a little different, but it is much like the third 1394
count or the second count in the Dostis matter.

The twenty-third count, Rosa Sciortine, is an unlawful solicitation of $300; 24 is unlawfully contracting for $300; and the twenty-fifth is unlawfully receiving a hundred dollars.

That gives you a fair idea of what these counts are in this indictment without reading each and every one of them.

At this point I believe it would be very pertinent for me to read you the law that is in effect with respect to all these counts in this indictment. There are two laws, and this first one, 1395
Title 12, Section 1467a, is with regard to the statement and the next one, in substance, is with regard to the fees. This first section that I read to you will have respect to the Terrone and Wilson counts of falsification, and that law states this:

"Whoever makes any statement knowing it to be false or whoever wilfully overvalues any security for the purpose of influencing in any way

1396 the action of the Home Owners' Loan Corporation or the Board or an association upon an application, advance, discount, purchase or repurchase agreement or loan under this act or any extension thereof by renewal, deferment or auction or otherwise, or the acceptance, release or substitution of security thereof, violates this section."

The next part goes on to the sentence and to the fine, if any. You are not concerned at this time, and please do not take into account either the possible sentence or fine or both that might be imposed. That is my duty; not yours. I am 1397 giving you the law that they claim was violated and when I say "they" I mean the government, in the Terrone count and in the Wilson count, that I read to you with regard to falsification.

With regard to the solicitation, the contracting for and taking of fees, which the Government claims was unlawful, and which I will explain to you later on, as I view it, the law in effect is Title 12, Section 1467e, which I will read to you:

"No person, partnership, association or corporation shall directly or indirectly solicit, contract for, charge or receive, or attempt to solicit, con- 1398 tract for, charge or receive any fee, charge or other consideration from any person applying to the corporation for a loan, whether bond or cash, except ordinary fees authorized and required by the corporation for services actually rendered for the consummation and perfection of title, appraisal and like necessary services."

It then goes on into the sentence, with which you have nothing to do.

Those two laws that I have just read to you

are substantially the laws that we have to deal with in this case. 1399

In approaching the case, Gentlemen, I will first give you some general rules that apply to all of the counts of this indictment. No inference is to be drawn by you from the fact that the defendant has been indicted. This defendant, like all defendants in all criminal cases, is presumed to be innocent until proven guilty beyond a reasonable doubt, and that presumption of innocence stays with the defendant from the beginning until the end of the trial and prevails until overcome by evidence which satisfies you beyond a reasonable doubt of the defendant's guilt. Reasonable doubt means just what the words say and imply. It is a doubt for which you are able to give a reason. It is not an excuse, or a device to prevent you gentlemen from performing an unpleasant task or duty. 1400

The burden, Gentlemen, on all these counts in the indictment, is upon the United States Government to prove the guilt of the defendant beyond a reasonable doubt.

During the course of the trial the Court has been called upon to rule upon objections and motions. These are matters of procedure only and do not indicate any opinion on the part of the Court as to the guilt or innocence of the defendant. Questions of law, Gentlemen, are for the Court alone and you take the law from me. Questions of fact are for you alone, and you are the sole and exclusive judges of those facts. 1401

In approaching these questions of fact, let me say at the beginning, and this applies to every witness who took the witness: If any witness has

1402 wilfully testified falsely with respect to a material fact, you have a right to disregard and cast aside all of the testimony of that witness or retain that part of the evidence which you believe. Those are the general rules with which you have to deal here.

Let me say at this time, Gentlemen, that you are not to have any feeling of prejudice or bias against the defendant because the United States Government is prosecuting her. You are to weigh her guilt or innocence on the evidence and that alone, and likewise you are not to have any feeling of prejudice or bias against the Govern-
1403 ment because this defendant happens to be a woman. She stands in the same category as any other defendant, Gentlemen, and you must approach your deliberations with that in mind.

I am going to refer to some of the facts in the case, Gentlemen, but it is your recollection of the facts which is going to control. If mine and yours agree, you adopt it. If it does not, you take your own recollection of what the facts are. And I am not going to refer to all the facts in the different counts because we have been here for almost a week hearing them, but I
1404 must recall some of these facts so I can then later tell you what the law is in relation to those facts.

In the Dostis case, the claim there by the Government is that there was an unlawful solicitation and an unlawful contracting for the sum of $40. You have heard the evidence in this case. There seems to be no dispute that $20 was paid and $20 was returned to Dostis by this defendant. The dispute as to what the $20 was for, and what

the defendant was to do for that $20, and what Dostis claimed she was to do, is one of question of fact for you to determine, pursuant to the law which I will explain to you later on. 1405

In the Terrone case you have an unlawful solicitation of $50 and the filing of a false statement. You remember that situation as well as I do, as to what she claims she was to do and as to what the Terrones claim she was to do; and I might say that is true of all these counts.

Let us take the two falsification counts first. The evidence on that, uncontradicted by the defendant, is that she claimed there was $590 due to her on this mortgage when the admitted fact was that she stated there was only $285 due her. We will take that count with the Wilson count on falsification, wherein she claimed $500. There were two claims in that case filed, as I recall it, but your recollection will control, if you disagree with mine. The fact is she admits that there was only $150 due her. She says it was an exaggeration; the Government says it was falsification, that this statement was made by her for the purpose of influencing the Home Owners' Loan Corporation in making a loan sufficient to include those two larger amounts. 1406

The law with respect to the false statement may be summarized briefly as follows, Gentlemen, and pay attention to this, for it will dispose of those two counts in so far as the law is concerned: 1407

"Whoever makes any statement knowing it to be false, or whoever wilfully overvalues any security for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon an applica-

tion for a loan is guilty of a violation of the law made and provided in that case."

In that connection the Government introduced two documents, three documents, really, two in the Wilson case and one in the Terrone case. In one instance I have outlined to you the actual amount due and the amount to which it was increased. You have heard what the defendant has said about her view of it, that she did not know what the exact amounts were and that she more or less guessed at it; while the Government says that she did know, that she was a careful business woman and knew exactly what was coming to her, but she put these amounts in in order to influence the Government to make these loans.

The filing of these applications comes squarely within Title 12, Section 1467, subdivision (a), which I have read to you, and it is for you to determine, Gentlemen, whether the defendant made these statements in these applications knowing the same to be false, or wilfully overvalued the security which she owned and controlled in the property wherein the owner sought to obtain a Home Loan.

That is very simple, isn't it? If she did it knowingly and wilfully, with the design to get that money from the Government, you may say that she is guilty on these two counts of falsification. If she did not, then you must say she is not guilty. That is one of the questions of fact, Gentlemen, which you must determine, and, in determining that question of fact, use your good, hard common sense.

In determining whether you believe the witnesses or not, you will remember how they im-

pressed you, what interest they had, if any, how they testified, whether they struck you as being truthful or not, whether they struck you as being sincere or not, and whether or not they made you feel that they could be believed on the facts about which they were testifying. You must take into consideration the defendant's business, what she had been doing for years, and what she knew about that business, and when you take all those facts into consideration, say to yourselves, Was it done wilfully and knowingly by this defendant, or was it an exaggeration, as she says, and not intended to influence or induce the Home Owners' Loan Corporation to pay the amount which she claimed to be due under those two mortgages. 1411 1412

After you have gone through the evidence in these two counts alone, that is, the falsification counts, you will then say whether she is guilty or not guilty under those counts, and do it fearlessly and without regard to who it helps or hurts.

Your duty is plain: You are here to determine questions of fact without regard to who it helps or hurts, because, if there has been a violation of the law, you should put your finger on it right away; and if there has not been, you should put your finger on it too. 1413

Let us go to the next set of cases, and those are the contracting, or the attempt to contract and the solicitation. If you will consider that law, Gentlemen, you will find that you can split it up into four subdivisions, and substantially the four subdivisions into which you could split this up are as follows:

1414 No person shall directly or indirectly solicit for a consideration from any person applying for a loan. That is the substance. I am shortening the language of the statute which I read to you. Secondly, no person shall directly or indirectly contract for a consideration from any person applying for a loan. This is without consideration, you don't have to have a consideration. Third: No person shall attempt to solicit an agreement from a person who is making application for a loan. And then the fourth one is: No person shall attempt to contract with any person who is applying for a loan.

1415 That is plain, hard common sense. I do not think it is very hard for you to understand. Having that law in your minds, as I have tried to break it up for you, Gentlemen, so it is very easily understandable to you, in respect of these counts of solicitation, contracting and receiving fees, let me say this to you in concise language, that the law that applies to that is this: If the defendant, Gertrude Kay, made agreements to reduce mortgages for which she was to receive a consideration, depending upon the Home Owners' Loan Corporation to make a loan, and you find

1416 further that she was to render some service in the obtaining of the loans, and made these agreements without saying anything about the service that she was to render with respect to obtaining the loans, you may say that those agreements were a subterfuge on her part to hide the fact that she was to render some service in the obtaining of the loans. And if you find that is the fact from all this evidence, then you may say that she violated that second law, or some of the terms or parts of it, as I have read it.

In determining that particular question of fact, 1417
you again must apply the rule that I laid down for you before with regard to witnesses, with respect to how they struck you and how they testified, and what they said to you within your hearing. Of course, Gentlemen, number of witnesses alone is not the thing that is going to control you. The quality of the testimony rather than the quantity is what should control you. What do you believe?

If you have a number of witnesses who testify, and you believe them all, and those witnesses convince you of the fact that you believe, then you 1418
should render your verdict according to the fact that you find you believe. And that is particularly true in relation to that part of the law which I have just read to you. In other words, there have been nine or ten witnesses who have testified here with respect to that, but that alone should not prove this defendant guilty; but if you believe all those witnesses or a great majority of them, the number of witnesses is a help to you in determining the fact. In other words, it is what you believe from the witnesses that counts and not alone the number. In that connection you have to take into consideration the 1419
defendant's testimony and how she struck you when she testified. Do you believe her? Do you believe these other witnesses? When you find that definite fact, then render your verdict accordingly.

With respect to the other part of that law, it is not necessary, and I charge you as a matter of law that it is not necessary, that any money need have been paid in order to constitute a

1420 violation of Section 1467(e). It is sufficient, if a person contract or solicit, or attempts to contract or solicit, or obtain any consideration or attempts to obtain any consideration from any person in connection with an application for the obtaining of a Home Loan.'

What I said with respect to consideration meant actually paid to her in hand. As you recall the testimony, some paid her cash and some did not, but agreed to get the money later on if the loan went through. That is particularly true for counts 1, 4, 7, 11, 13, 17, 19, 21 and 23, which charge the defendant with unlawfully soliciting a
1421 fee, charge or other consideration from the persons mentioned in the respective counts of the indictment. You will recall that some of them got under the wire and some of them dropped out, some of them went through, some did not; some she had contracts with never received their loans; some she got a little on; some she did not.

You will observe, Gentlemen, that counts 2, 8, 14, 18, 20 and 24 of the indictment charge the defendant with unlawfully contracting for fees, the amount of the fee for which the defendant contracted being specified in each count of the
1422 said indictment. And, Gentlemen, the third, ninth, twelfth, twenty-second and twenty-fifth counts charge the defendant with unlawfully contracting for and receiving the fees, the exact amounts involved being specified in each of the counts of the indictment, all of which charges, as specified in the indictment, are in violation of Section 1467 (e), Title 12 of the United States Code. And the fifth and fifteenth counts, with regard to the false statements, which I have read, as

specified in the indictment, are in violation of Section 1467 (a). 1423

You now have the three divisions of the charge, we might say, that is, the false statement, the solicitation and contracting where money was passed, and the solicitation and contracting where money actually did not pass but was to pass later on.

Gentlemen, what I want you to do is to apply this law to these facts, using your own good common sense.

We all know what the Home Owners' Loan Corporation was originally intended for. It did not prohibit foreclosures, of course, Gentlemen. The filing of an application for a loan did not prohibit a foreclosure. The mortgagees, the owners of the mortgages, did not have to accept any less amount than the face amount of their mortgages, if they did not see fit to. The business of a real estate and mortgage broker, such as that of the defendant, is a local business beyond the control of Congress and which Congress did not intend to restrict or regulate in so far as it related to foreclosures, adjustments, stays and reduction of mortgages, provided they did not come within the Home Owners' Loan Corporation —that was the one exception. 1424 1425

Now, if you find, Gentlemen, from all the facts and circumstances here that the Government has sustained its burden on these counts, if you find that this defendant is guilty of a violation of those two statutes or either one of the statutes, and you find that she is guilty under the rules that I have laid down to you, you will render a verdict of guilty on either all of the counts, or

1426 those counts on which you find her guilty. If you find from all the facts and from the law which I have given to you as applicable to those facts defendant is not guilty of any of the counts in this indictment, you will then render a verdict of not guilty.

This is a very important case to this defendant, and it is a very important case to the Government. It is very important, Gentlemen, that laws shall be obeyed. It is very important that defendants receive fair trials.

Ignorance of any law excuses no one, Gentlemen, and if you find or should believe that this
1427 defendant knew nothing about this law, that is no excuse here, Gentlemen. Please remember that.

You must find the defendant guilty or not guilty under the rules and only the rules which I have laid down to you, as far as the law is concerned, and you must find her guilty or not guilty in accordance with the facts that have been testified to here by these witnesses; and with relation to that just use your hard common sense.

What do you sincerely and frankly believe is the fact? The minute you put your finger on that, Gentlemen, you can very readily find your
1428 verdict of either guilty or not guilty in accordance with the rules that I have laid down.

Mr. Scileppi, I have charged all the requests that you made.

I have charged the first, second and third of yours, Mr. Serri.

The fourth request by the defendant is as follows:

"That since the mortgagees retained all their rights to sue on their bond and mortgages, not-

withstanding the Home Owners' Loan Corporation Act, the owners, although applicants for loans, necessarily retained all their rights to negotiate with their mortgagees, and to do so through representatives of their own choosing." 1429

I will charge that, Mr. Serri, but in that connection you must apply the rules with respect to the Home Owners' Loan Corporation, which I have given to you, Gentlemen, and that is all of the rules. You have heard all this testimony of what fees they were entitled to charge and what fees the Government allowed to be charged. You must take that all into consideration in determining that request and in determining the whole case. 1430

Request No. 5:

"That the owner, although an applicant for a loan, was left free to contract for the service of his own representatives for the purpose of negotiating to change the terms of payments on any existing mortgage, to stay threatening foreclosures or to reduce the principal of any existing encumbrance."

That is true, Gentlemen, but you have to take all the conditions which I gave you in my charge, and I ought to add there, with respect to the Home Owners' Loan Corporation. The law which I have read to you applies only to that corporation and to no other, and you are not to consider in this case what the rules and regulations of other corporations were. You are to consider only what the rules and regulations of the Home Owners' Loan Corporation were with respect to the laws which I have read to you and only that. 1431

No. 6 I refuse to charge, excepting as I have already charged.

1432 (Request No. 6 reads: "That the payment by the owner applicant for services in negotiating with mortgagees may have been contingent on the closing of the Home Owners' Loan Corporation loan does not affect validity of contract where the defendant or agent contracted and charged solely for services in contacting mortgagees.")

No. 7 I refuse to charge except as I have already charged, and No. 8 I refuse to charge excepting as I have already charged.

(Request No. 7 reads: "That the business of a real estate and mortgage broker, such as that
1433 of the defendant, is a local business beyond the control of Congress and which Congress did not intend to restrict or regulate in so far as it related to foreclosures, adjustments, stays and reduction of mortgages.")

(Request No. 8 reads: "As to the two alleged false statements as to the amounts due on the two second mortgages, Terrone and Wilson, if the jury find that the defendant did not know the correct amount, and that the incorrect amount was inserted solely as the result of a careless act, then the defendant has not violated the law.")

No. 9 I refuse to charge, except as already
1434 charged.

(Request No. 9 reads: "As to the two alleged false statements as to the amounts due on the two second mortgages, Terrone and Wilson, if the jury find that the defendant did not make these statements with the purpose of influencing the action of the Home Owners' Loan Corporation, then the defendant has not violated the law.")

No. 10 I refuse to charge, except as already charged.

(Request No. 10 reads: "As to the first, second 1435
and third counts of the indictment, namely, those relating to Esther Dostis, if the jury find that the property 2289 Coney Island Avenue was not occupied by the said Esther Dostis as her home, then the defendant is not guilty under these three counts.")

No. 11, as it relates to the Benemerito evidence, which I did not go over in detail, I will read to you, Gentlemen.

"As to the eleventh and twelfth counts, namely, those relating to Liberata Benemerito, if the jury find that the defendant made her contract on 1436
June 5, 1934, and on June 11, 1934, paid over the $50 to the first mortgagee, and withdrew from this transaction on June 11, 1934, and that the owner at that time had not applied to the Home Owners' Loan Corporation for a loan and in fact applied for the first time on June 29, 1934, the defendant is not guilty under these two counts."

I charge that is so, Gentlemen, but that is only a part of the Benemerito evidence. I will charge those facts, but I say to you, in those eleventh and twelfth counts, that you have to take into account all the other facts that were testified to by the other witnesses in determining whether 1437
or not she is guilty or innocent on the eleventh and twelfth counts.

No. 12 I refuse to charge, excepting as I have already charged.

(Request No. 12 reads: "As to all the counts for soliciting, contracting and receiving, if the jury find that the only services for which the defendant charged the owner applicants, were for contacting mortgagees, adjusting terms of pay-

1438 ment on their mortgages, staying foreclosures and reducing the amount of existing mortgages, the defendant is not guilty under these counts.")

Gentlemen, in returning your verdict, please render your verdict separately on each count. You have to do so. If you want any assistance, when you come down to that, let me know, if you should come to that, that is, if you need any.

I would suggest that you first go out and determine this case under the rules I have laid down to you and then if you need any assistance, submit your request and I will be glad to assist

1439 you.

You may retire, Gentlemen.

Any exceptions, Mr. Serri?

Mr. Serri: I note an exception, your Honor, to the charge to the effect that rendering some service in obtaining a loan is a violation of the law, on the ground that if no charge is made for any incidental service, the mere rendering of incidental service, where the charge is for something else, but not for obtaining the loan, that is, mere rendering of some service, is not a violation of the law. For example, I might write a dozen letters. If I don't charge for that dozen letters, but for

1440 reducing a mortgage, and the reduction of the mortgage is the essential transaction, the mere fact that I render some service when I don't charge for that incidental service—that is not a violation of the law.

The Court: Gentlemen, I read the law to you which tells you just what the law intended to do, directly or indirectly, and if the facts come under those laws, you will find your verdict accordingly, and I refuse to charge now your request except-

ing as I have charged just now and in the entire charge. 1441

Mr. Scileppi: Count 9 is the Sulfaro count, and Count 12 is the Benemerito count. The charge in the indictment is unlawfully charging and receiving, in the Sulfaro count, thte sum of $25, which is the ninth count; and in the Benemerito count, which is the twelfth count, unlawfully charging and receiving $50.

The Court: Yes, that is a little change over the Dostis accounts, but the language in the indictment is the same. In the Dostis account the $20 was charged and returned. Here the money was charged for some services, which you heard the testimony about, and in that respect those counts are a little bit different, but the language is substantially the same as I read. 1442

Mr. Scileppi: There was an actual receiving count in the Sulfaro and in the Benemerito cases.

The Court: But in the Dostis case there was actual receiving too?

Mr. Scileppi: That is right too.

The Court: So that what I meant to convey is that the one that I read to you in the Dostis matter, the count in the indictment, is much like the count that the District Attorney just referred to, in substance. That is what I meant to convey. Is that right? 1443

Mr. Serri: That is right.

Mr. Scileppi: That is right.

The Court: Gentlemen, as I said to you, you will return your verdict on each count, and you will return on each count guilty or not guilty. That does not mean you have to find the defend-

1444 ant guilty on all counts or not guilty on all counts. You may find her guilty on some counts and not guilty on some counts, or not guilty on all counts or guilty on all counts. Your verdict must be rendered separately on each count.

(Addressing the alternate jurors:)

I thank you very much for your services, but your services are no longer required and you are discharged with the thanks of the Court.

The jury may retire.

(The jury retires at 3:30 P. M.)

(The jury returns at 3:45 P. M.)

1445 The Court: Have you a request?

Gentlemen, my rule is that neither counsel is to speak unless I ask you questions. Understand that?

Have you a request to make?

The Foreman of the Jury: Yes, your Honor. Can we have the counts on a piece of paper?

The Court: We are preparing them now. Under the law, Gentlemen, I cannot give you the indictment. If I could, I would, but you could not make any notes on this indictment, you see. So we are giving you the thing in note form.

I want to look them over, Mr. Clerk, before
1446 they are given to the jury.

It is agreed, for the record, that I may hand the jury small sheets of paper with the names of the persons in the different counts and substantially the charge contained in each count. Both counsel, having seen these sheets of paper, agree that the jury should have the information in the form that I am giving it to them.

Gentlemen, I think I had better explain to you what we have done here, so that you will all understand.

"Count 1, Esther Dostis, unlawful solicitation; 1447
Count 2, Esther Dostis, unlawfully contracting for the sum of $40; Count 3, Esther Dostis, receiving the sum of $20 for H. O. L. C. services."

I did not follow that out, but the numbers on the left are the numbers of the counts in the indictment, the names of the persons, and what, briefly, is the charge. Take that with you and make notes, and when your verdict is rendered, read it off from those notes.

You see, Gentlemen, I could have read all of them to you, and you could have made your own copies, but that is pretty hard detail work for 1448
any one man on the jury to do, and we have done it this way instead so you will have it much easier; and, in a way, we should do the work for you on that.

(The jury again retires at 4:05 P. M.)

(Between 6:00 P. M. and 7:00 P. M. the jury had dinner.)

(Jury returns to the court room at 8:25 P. M.)

The Court: I have a communication, Gentlemen, from you, which reads as follows: "May we please have defendant's testimony in regard to signs on walls warning anyone against soliciting house loan funds for clients?" 1449

You would like to have that read to you, is that what you want?

The Foreman: Yes, sir.

The Court: Mr. Reporter, will you refer to that testimony and please read it to the jury?

(The reporter read the record as follows:

"By the Court:

"Q. You claim you did nothing about these

1450 loans in any of these cases? A. That is not what I claim. Will you please let me explain?

"Q. Please answer my question. I want to know your frame of mind. Did you know that with respect to loans that you could not render any services and charge any money? A. I did not——

"Q. Did you have that in your mind? A. With respect to an application, I knew that, yes, sir.

"Q. You knew that you could not charge for that? A. I knew I could not charge for applications because I had seen such posters around in the Home Owners' Loan offices.

1451 "Q. I mean, you saw it when you visited the Home Owners' Loan office? A. Yes.

"Q. You saw you couldn't do any work— A. I saw you weren't able to charge for an application for a Home Owners' loan.")

The Court: Is that the portion you wanted?.

The Foreman: Yes, sir.

The Court: You may now retire.

(The jury retires at 8:35 p. m.)

(The jury returns at 10:35 p. m.)

The Court: I have another request from you; see if I read this right. If I don't, whoever wrote

1452 it, there is a word here or so, if I don't read it right, you let me know.

"Could you give us your decision if the defendant was within her rights as a real estate broker?"

The Foreman: That is right.

The Court: A word is scratched out or something written in. (Continuing reading) —"as a real estate broker to enter into contracts to contact"—is that it, "contact"?

The Foreman: Yes, sir. 1453

The Court (continuing): —"holders of first and second mortgages for clients who had an application within the H. O. L. C. for a loan?"

That is the question?

The Foreman: That is the question.

The Court: Now, please pay attention strictly to what I have to say: I told you in my charge that if she entered into these contracts with persons who had made applications for loans to help reduce first and second mortgages or third mortgages as a subterfuge to hide her activities in the application for the loan, that that would come 1454 under that section of the law which I read to you, the second section, and would be a violation of that statute.

Now, in determining that question you must take into consideration all the testimony that you heard, some of which I will refer to, and you take your own recollection of the evidence, of course, and that is, eventually where was the money going to come from that paid her for these contacts or contracts that she had with these first and second mortgage holders, and what was in her mind in operating, keeping in mind that she knew, she testified, that she could not operate 1455 on the loan itself, and if all her activities were a cloak, or to hide the fact that she was helping along the loan, then I say to you, Gentlemen, as a matter of law, you can say that she has violated that law.

Now, do you understand it, Gentlemen?

You must not take these contracts standing alone. You must take the testimony of the witnesses, who told you what led up to the time

they signed the contracts and what her activities were after the contracts were signed, where she was to get her money from, and how she was to get her money, and all the activities concerning it both before she started to make the contracts, the conversations that led up to the contracts, and her activities after the signing of the contracts, especially the letters to the loan company, her activities in going up there when some of the loans were closed, and all her activities in general. That is what you have to take into consideration here, Gentlemen.

Now, do you understand me?

The Foreman: Yes, your Honor.

The Court: Does any other juryman want to ask any question? Does he have any question in his mind that he wants to be enlightened about?

Just take this testimony, Gentlemen, from the beginning, in each case, down to the end, and fit it in. Keep in mind what she knew, what she said she knew; then say to yourselves, "Was it all with relation to the loans, was it ultimately all coming out of the loans?" Consider everything else that has been said here and then say to yourselves, "Did she violate that law?" And that law says, as you heard me read it, directly or indirectly soliciting, directly or indirectly making contracts, because indirectly means in that law, Gentlemen, that you must not construe literally what she wrote alone. You have to construe what she wrote in the light of what the witnesses told you and in the light of what was to happen later. You have to take it all together, fit them in and then say whether she is guilty or not guilty.

That is very simple, isn't it?

Further Instructions to Jury.

Is there any question you want to ask, any one of you? 1459

Now, you have labored very hard and arduously and you are to be commended for it, but I don't want you to go out misunderstanding what your duties are.

Have you any further question?

The Foreman: That is all I know of.

Mr. Serri: At this time, if your Honor please, I want to note an exception to your Honor's entire answer to that question. I want to request your Honor to say that if they find there is no subterfuge and that the charge was solely to reduce the mortgages, and there was no subterfuge, then she is not guilty. 1460

The Court: I refuse to charge excepting as I have explained to you in my own language, Gentlemen.

Mr. Serri: Exception.

The Court: You may retire.

(The jury retires at 10:40 p. m.)

(The jury returns at 11:50 p. m.)

The Court: Now, then, the hour is getting late, I don't want to coerce you or force you into a verdict, but, of course, if you don't agree by half past twelve, I am afraid I will have to lock you up for the night. It took five days to try this case. I would like to have a verdict, if I could. Of course, it is your duty to try to talk to each other and analyze this evidence and try to iron out your difficulties. 1461

Now, is there any question of law that is troubling you, anything that you would like to know, any individual that wants to ask a question? If you do, I will be glad to do what I can to help you.

1462 Juror No. 8: I would like to ask a question: Can we render a decision on part of those counts, that is to say, on two or three of them, one yes on two or three, and the reverse on the others?

The Court: Surely.

Juror No. 8: We can do that?

The Court: Yes, you can, you can find her guilty on some counts and not guilty on some counts, but I would like to have a verdict on all the counts.

Juror No. 8: Yes, so—that is what we are trying to get.

1463 The Court: That is what I am trying to get. You understand, I hesitate to send you away all night, but after five days, we would like to have a verdict one way or the other in the case.

Suppose you go out and try again?

Juror No. 8: If your Honor please, we must be unanimous on each of the counts?

The Court: Oh, yes, you have to be unanimous on each of the counts. For instance, if you find guilty on one count, that must be a unanimous verdict; if it is not guilty on any count, that must be a unanimous verdict.

Supposing I give you until half past twelve,
1464 and then I am afraid I will have to make arrangements to send you to a hotel.

Juror No. 8: Your Honor, do we have to bring a verdict in on the whole 23 counts, whether guilty or not guilty?

The Court: I would rather have it that way.

Juror No. 12: But you can take just part of it? Or you prefer having a verdict on the 23?

The Court: No, I am not going to take a

partial verdict, Gentlemen. I want you to find 1465
your verdict on each count one way or the other.

Juror No. 12: On the 23 counts?

The Court: On the 23 counts.

Anything else troubling you, Gentlemen? Speak up.

Now, it is your plain duty, Gentlemen, to go out and reason with each other and analyze this testimony with each other and do not be stubborn; analyze, and argue the evidence out with each other, using common sense, with one idea, of doing justice in this case to both the Government and this defendant.

1466

Juror No. 4: Your Honor, there is such a similarity between so many of the counts, that seems to be the difficulty.

The Court: In what way do you mean that, Mr. Juror? I do not quite understand.

Juror No. 4: There are many counts that are solicitation counts and the others are relating to the contracts.

The Court: Yes. In what way do you mean there is a similarity There isn't any similarity in the charge to the extent that solicitation is one part of the crime——

Juror No. 4: True. 1467

The Court: Contracting is another part of the crime. You can take them up and divide them.

Juror No. 4: Well, that has been the opinion of the jury, to separate the solicitation counts from the contract counts. If one——

The Court: You have those sheets on the indictment, have you?

Juror No. 4: Yes.

1468 The Court: The counts, some are for solicitation and some are for contracting, right?

Juror No. 4: Yes, sir.

The Court: For instance, you can say guilty or not guilty on the solicitation count, and then you can go to the next count, the contract, and say guilty or not guilty on that contract count.

Juror No. 4: What I am trying to point out, your Honor, if she is guilty on one, guilty on all?

The Court: No, you don't necessarily have to find her guilty on solicitation and then have to
1469 find her guilty on contracting.

Juror No. 4: No, I mean with reference to all solicitation.

The Court: No, no.

Juror No. 4: I know, but that is where the difficulty is.

Mr. Serri: Now, I want to object, if your Honor please.

The Court: Please, Mr. Serri.

Mr. Serri: No, no.

The Court: When I get through.

Mr. Serri: I want to note an exception.

The Court: You will take your exceptions
1470 when I am through.

Mr. Serri: All right.

The Court: Now, then, there will be no interruption by either counsel while I am talking to this jury. After I get through, then you can get up and take your exceptions, and not until then.

I do not think I have cleared this matter up for you yet.

Juror No. 4: I am only speaking for the jury.

The Court: That is the question. You can find her guilty or not guilty on the solicitation count; and then you go to the next count, which is the contract count, and find her guilty or not guilty on that count, so on, right down the line. 1471

Juror No. 4: Do I make myself clear, see, that the jury classifies all solicitation counts together?

The Court: What do you mean?

Juror No. 4: All the contract counts together; if she is not guilty on one, she is not guilty of all.

The Court: No, but you see, you may find her, under the rules I have laid down here, on the solicitation counts, guilty or not guilty on that solicitation count. Then you go to the contract count and you take that up separately. You don't have to find on the contract count the same verdict that you find on the solicitation count. Do you get my point? 1472

Juror No. 4: I do, yes, sir.

The Court: Does that explain your question?

Juror No. 4: I fear the jury do not feel that they should separate those counts; if it is one, it is all.

The Court: Oh, the jury has the opinion that if they find her guilty or not guilty on the solicitation counts, that must hold true with the contract counts? 1473

Juror No. 4: No; that that holds true on every one of the solicitation counts.

The Court: No, no, that is not so, Gentlemen. You take these solicitation counts, you find her guilty on one, two, three, four or five of them, or not guilty on one, two, three, four or five. If you find her guilty or not guilty on the first solicita-

1474 tion count, you must not necessarily say the same on all the solicitation counts, because the evidence to acquit or convict, you separate on each count. Do you get my point?

In other words, in the Dostis matter there are three counts, aren't there, solicitation, contracting and charging a fee. You may take the solicitation count and say guilty or not guilty, that is your verdict on that count, and you may take the second count, which is the contract count, and you may say guilty or not guilty on that count, and you don't have to necessarily follow your
1475 verdict on the second count as you find it on the first count, because you may find from the evidence that she is guilty or not guilty on the first count or guilty or not guilty on the second count. Then you would go to the third count, the charging of a fee. You might say not guilty on the first count, not guilty on the second count, and guilty on the third count, or vice versa. And that is true of each one of these cases with the counts. Now, do I make myself clear on that? I think that is very clear, isn't it?

In other words, you don't have to follow your verdict as you find on the first count. You have
1476 each count to find separately and agree on each one of them separately. That is why I gave you those numbers, so that you could write, rather than trust to your memories. First count, guilty or not guilty, write that out for yourselves; second count, guilty or not guilty; third count, guilty or not guilty; and then when you come in with your verdict, if you agree, you have used those sheets to render your verdict, because I can quite understand that you could not remember

all those counts from your memory. Write out what the jury's verdict is on each count and read your verdict to the stenographer as you find it on each count; and you can take each count separately, as if it were standing alone and by itself, and it is perfectly proper for you to acquit on some solicitation counts and convict on some solicitation counts; perfectly proper for you to acquit on some contract counts, and to find her guilty on some contract counts; and then you have the two falsification counts, and you can find her guilty or not guilty on each one of those counts. 1477

Do I make myself clear, Gentlemen? 1478

Now, will you try to go out and try to analyze, and reason with each other, on all of these counts? Do it that way, find your verdict on each count, in other words, as I have laid down, and read it just as you find it.

Is there any other question? Have I cleared that up for you, Jurors?

The Foreman: Yes, sir.

The Court: Have I cleared that up for all of you now?

Several Jurors: Yes, yes.

Mr. Serri: Now may I note my exception, your Honor? 1479

The Court: Just a minute. Take your exception in legal form.

Mr. Serri: I note my exception to the entire statement of the Court as, in effect, an attempt to coerce the jury, and at this time the defendant moves for the discharge of the jury on that ground.

The Court: Motion denied. Exception.

Mr. Serri: Exception.

Verdict.

1480 (The jury again retires at 12 midnight.)
(The jury returns at 12:35 a. m.)
The Clerk of the Court: Gentlemen of the Jury, have you agreed upon a verdict?
The Foreman of the Jury: We have.
The Clerk: The case of United States v. Gertrude Kay, alias Gertrude Klein, how do you find the defendant, guilty or not guilty on the first count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the second count?
1481 The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the third count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the fourth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the fifth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the seventh count?
The Foreman: Not guilty.
1482 The Clerk: How do you find the defendant, guilty or not guilty on the eighth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the ninth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the eleventh count?
The Foreman: Not guilty.

Verdict.

The Clerk: How do you find the defendant, 1483
guilty or not guilty on the twelfth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the thirteenth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the fourteenth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the fifteenth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, 1484
guilty or not guilty on the seventeenth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the eighteenth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the nineteenth count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the twentieth count?
The Foreman: Guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the twenty-first count? 1485
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the twenty-second count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the twenty-third count?
The Foreman: Not guilty.
The Clerk: How do you find the defendant, guilty or not guilty on the twenty-fourth count?
The Foreman: Guilty.

1486 The Clerk: How do you find the defendant, guilty or not guilty on the twenty-fifth count?

The Foreman: Guilty.

The Clerk: Gentlemen of the Jury, the Court has received your verdict. You say you find the defendant not guilty on the first, second, third, fourth, seventh, ninth, eleventh, thirteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second and twenty-third, and guilty on counts 5, 8, 12, 14, 15, 20, 24 and 25, so say you all?

The Foreman: Right.

The Court: Now, Gentlemen, let me commend
1487 you for your verdict and for your arduous labor, and you have the thanks of the Court for your splendid duty in this case.

Mr. Serri: I move to set aside the verdict as being contrary to the law—

The Court: You move to set aside the verdict only on the guilty counts?

Mr. Serri: Oh, naturally, naturally. (Continuing) —contrary to the weight of the evidence and the law.

The Court: Denied. Is that your full motion?

Mr. Serri: Exception.

May I ask your Honor that the bail of the
1488 defendant be continued?

The Court: No, I cannot do that, Mr. Serri. I must remand her. I will set a date for sentence that is convenient for you.

Mr. Serri: I mean, is that a binding rule? I mean, there is no fear, the defendant will be here.

The Court: No, Mr. Serri, for you personally, I want to commend your actions in the case. You are a very——

Mr. Serri: I mean, that does not mean anything to me. 1489

The Court: The rule here is that when a person has been convicted, they must be remanded. I will not let anybody out while I am in this court after a jury has found them guilty.

Mr. Serri: All right.

The Court: I must remand her. 26th for sentence.

1490

1491

Government's Exhibit 1.

1492

Application for Home Loan.

(Omitted pursuant to stipulation.)

Government's Exhibit 2.

Letter signed by Defendant Kay.

(Omitted pursuant to stipulation.)

1493

Government's Exhibit 3.

APPLICATION FOR LOAN.

County Kings
Village Brooklyn
City New York

$.....

1494 1. The undersigned hereby applies to Home Owners' Loan Corporation for a loan in the amount required for the purposes stated below, on terms provided in Home Owners' Loan Act of 1933, and represents that all statements made in this application are true, and agrees to furnish said Corporation with a first lien on the property herein described, as provided in said Act, if this transaction can be consummated.

2. A plan of the property is indicated at the

right, and the full legal description of the property is as follows (Copy from your deed): 1495.

Westerly side of East 12th
Street, 163 ft. south of (Property Diagram.)
Avenue T, Brooklyn N. Y.

Block #7315
Lot—14

3. The street address of the property is 2022 East 12th St., Brooklyn.

4. It has street improvements as follows: Sewers, paving, side walks and curbs.

5. Property is the home of the undersigned, built for not more than two families. 1496

6. The size of the main building is 20 ft by 70 ft containing 13 rooms and 2 baths, and 2 breakfast rooms, and is two stories high. Roof is of shingles. House is detached; is built of material as follows: Stucco & brick; and is eight years old, in good state of repair. Built-in features are as follows: 2 Stall Shower. Plumbing is connected with city water and has fixtures as follows: Galvanized. Waste is connected with city sewer. Heating system is steam pressure boiler in good condition. The house is connected and equipped with other conveniences as follows: Gas, elec., stall showers, French doors, tiled kitchens & bathrooms, parquet floors. There is a one car garage built of cement blocks. 1497

7. Applicant bought the property on the..... day of April, 1926 for $15,000, making total original cost $15,000. Improvements consisting of Re-stuccoed the house and painting & plumbing made since purchase or erection cost $400.00.

Government's Exhibit 3.

1498 8. The total encumbrances or liens on the property are as follows:

(a) First mortgage (1) original amount $7500, (2) present amount $9000, (3) due date September 1933, (4) interest rate 6%, (5) amount of interest due and unpaid $270, Nov. 1933, (6) Held by Title Guaranty & Trust Co. (7) whose address is #175 Remsen St., Brooklyn.

(b) Second mortgage (1) original amount $5500; (2) present amount $1,000, (3) due date until paid, (4) interest rate 6%,
1499 (5) amount of interest due and unpaid: Pd to date; pays monthly int., (6) Held by Mrs. Gengel (7) whose address is 2153 Ocean Parkway, Brooklyn.

(c) Unpaid taxes for (state periods) 1933 all. Total $131.76 263.52.

(d) Unpaid assessments for (state periods) About (5 payments). Total $200.

(e) Unpaid water rates for (state periods) Total Pd.

9. Which, if any, of the above mortgages is
1500 now actually under foreclosure? None as yet.

10. The purposes for which the applicant desires a loan are as follows: To take care of first mortgage and unpaid interest? $9270, second mortgage and unpaid interest? $1000, other liens? $131.76, unpaid taxes? $263.52, unpaid assessments and water rates? $....., minimum essential repairs? $150.

11. The title of the property is in the name of Rosa Sciortino and Joseph Sciortino whose address is 2022 East 12th Street, Brooklyn.

Government's Exhibit 3.

12. Applicant is 53 & 62 years of age, employed by Unemployed; is yes married, has two dependents and gives references as follows (Give name, nature of business and address): 1501

NAMES, NATURE OF BUSINESS AND ADDRESSES:

(1) Joseph Zito, Retired, 19 Bay 23rd St., Bklyn;
(2) Sam Hankin, Dress maker, 2026 East 12th St., Bklyn;
(3) Mr. Pace, Barber, 2007 East 12th St., Bklyn.

13. Have you made any other application for a loan to this corporation and if so, when and where? No. 1502

14. State all other real estate owned None.

1 daughter's salary $12 wk. Rent of Apt. with garage Mo. $60.00.

15. I warrant the foregoing information to be true, request the consideration of this application, and agree to pay any cost actually incurred for reasonable appraisal, examination and perfecting of title, survey, recording, or other necessary expenses, such work to be done by my agents, selected by the Corporation, and I agree to execute 1503 all necessary papers on their usual form as used by the Corporation in connection with the transaction.

This the 23 day of Oct., 1933.
Address 2022 East 12th St., Bklyn.

Signed JOE SCIORTINO
ROSA SCIORTINO

Government's Exhibit 4.

1504

July 21–1934

Services	$300
Paid Cash	50
Balance	$250

MISS KAY

Aug 4—Recd Twenty five Dollars ($25)
MISS KAY

Sept 5—Recd Twenty five Dollars ($25)
1505 MISS KAY

Government's Exhibit 5.

Application for Home Loan signed by Rosalie Abrimonte.

(Omitted pursuant to stipulation.)

1506 **Government's Exhibits 6, 7, 8.**

Three letters written and signed by Defendant.

(Omitted pursuant to stipulation.)

Government's Exhibit 9.

1507

Federal Bureau of Investigation, U. S. Dept. of Justice—85-96-10.

MORTGAGEE'S CONSENT TO TAKE BONDS

To Home Owners' Loan Corporation:

The undersigned is a holder of a 2nd mortgage or other obligation, which constitutes a lien or claim on the title to the home property of Laura Terrone, K-24928 located at 228 Bergen St., Bklyn, N. Y. in the sum of $590.00 including unpaid balance of principal and interest, to date. 1508

Being informed that said owner has made application to Home Owners' Loan Corporation to refund his said indebtedness, the undersigned has considered the method of refunding mortgages provided in Home Owners' Loan Act of 1933, as amended and passed by Congress and approved by the President, and the undersigned hereby consents, if said refunding can be consummated, to accept in full settlement of the claim of the undersigned the sum of $590.00, face value of the bonds of Home Owners' Loan Corporation, to be adjusted with not exceeding $25 cash and thereupon to release all the claim of the undersigned against 1509 said property.

It is understood that the Home Owners' Loan Corporation will incur trouble and expense in connection with its effort to refund the indebtedness of said home owner, and this consent is executed in consideration of the same and shall be binding for a period of 30 days from date, and thereafter until 10 days written notice shall have

Government's Exhibit 10.

1510 been given the State manager of the Corporation.
This, the 4th day of Sept., 1934.
Total amount due to mortgagee $590 as of Sept. 1, 1934.

EDNA GREGER
1904 Foster Ave.
Bklyn. N. Y.

Aug 14 1934
MCV

1511 **Government's Exhibit 10.**

EDNA GREGER
832 Ocean Avenue
Brooklyn New York

MORTGAGE NOTICE

Name Laura Terrone
Address 228 Bergen St
Interest On Feb 18/34 received
Total $12.88 covering Interest up to Feb 11/34
Mortgage on premises $15 Toward Reduction of principal
1512 Due Total 2788.
Balance of principal on Feb 18/34 is $285.00 (Two hundred and eighty five Dollars).
NOTE: This payment must be made promptly. If you wish a receipted bill, please enclose a stamped addressed envelop and this notice. Make payments in either check or money order and mail to above address. Thank you.

EDNA GREGER

Government's Exhibit 11.

1513

EDNA GREGER
755 Ocean Avenue
Brooklyn New York

MORTGAGE NOTICE

Name Received from Laura Terrone
Address of 228 Bergen St Bklyn.
Instalment Interest amounting to $14.65
Interest (Fourteen dollars & sixty-five cents
Total for ten months covering period
Mortgage on premises From Feb 11/34 to Dec 11/34.

1514

EDNA GREGER

NOTE: This payment must be made promptly. If you wish a receipted bill, please enclose a stamped addressed envelop and this notice. Make payments in either check or money order and mail to above address. Thank you.

Government's Exhibit 12.

APPLICATION FOR LOAN. 1515

$6500

1. The undersigned hereby applies to Home Owners' Loan Corporation for a loan in the amount required for the purposes stated below, on terms provided in Home Owners' Loan Act of 1933, and represents that all statements made in this application are true, and agrees to furnish said Corporation with a first lien on the property here-

505

Government's Exhibit 12.

1516 in described, as provided in said Act, if this transaction can be consummated.

2. A plan of the property is indicated at the right, and the full legal description of the property is as follows (Copy from your deed):

3. The street address of the property is 228 Bergen St., Bklyn., N. Y.

4. It has street improvements as follows: All.

5. Property is the home of the undersigned, built for not more than 3 families.

6. The size of the main building is....., by..... containing 14 rooms and 2 baths, and
1517 breakfast rooms, and is 3 stories high. Roof is of shingle. House is attached; is built of material as follows: Brick; and is 20 years old, in good state of repair. Built-in features are as follows: Plumbing is connected with city water pipe. Waste is connected with city sewer. Heating system: No heat.

7. Applicant bought the property on the 15 day of Oct., 1924 for $12,000.

8. The total encumbrances or liens on the property are as follows:

1518 (a) First mortgage (1) original amount $5500, (2) present amount $5500, (3) due date May, 1933, (4) interest rate 6%, (5) amount of interest due and unpaid $....., (6) held by E. Greger (7) whose address is 1904 Foster Ave., Bklyn., N. Y.

(b) Second mortgage (1) original amount $650, (2) present amount $450, (3) due date June, 1932, (4) interest rate 6%, (5) amount of interest due and unpaid $....., (6) held by E. Greger (7) whose address is 1904 Foster Ave., Bklyn., N. Y.

Government's Exhibit 12.

(c) Unpaid taxes for (state periods) 1933 & 1934. Total $300. 1519

(d) Unpaid assessments for (state periods) ..... Total $.....

(e) Unpaid water rates for (state periods) 1933 & 1934. Total $50.

9. Which, if any, of the above mortgages is now actually under foreclosure? .....

10. The purposes for which the applicant desires a loan are as follows: To take care of first mortgage and unpaid interest? $5750, second mortgage and unpaid interest? $500, unpaid taxes? $350, minimum essential repairs? $450. 1520

11. The title of the property is in the name of Laura Terrone whose address is 228 Bergen St., Bklyn., N. Y.

12. Applicant is 39 years of age, employed in business as dressmaker, address 228 Bergen St., earning $30 per week, is married, has dependents and gives references as follows (Give name, nature of business and address):

NAME, NATURE OF BUSINESS AND ADDRESS:

(1) P. Geller, Insurance, 832 Ocean Ave., Bklyn. 1521

13. Have you made any other application for a loan to this corporation and if so, when and where? No.

14. State all other real estate owned: None.

15. I warrant the foregoing information to be true, request the consideration of this application, and agree to pay any cost actually incurred for reasonable appraisal, examination and perfecting

1522 of title, survey, recording, or other necessary expenses, such work to be done by my agents, selected by the Corporation, and I agree to execute all necessary papers on their usual form as used by the Corporation in connection with the transaction.

This the 17 day of May, 1934.
Address 228 Bergen St., Bklyn., N. Y.

Signed LAURA TERRONE.

1523

Government's Exhibit 13.

Aug 18—1934

Home Owners Loan,

Please will you rush my Loan through—the first mortgage is making trouble for me on account of my tax and Interest Arrears. I don't blame them and I have been doing what I could to catch up but it is too much behind. I ask please that you do what you can to get my loan closed this week please.

1524 Thank you for assisting me.

Very truly yours,

LAURA TERRONE,
228 Bergen St
Bklyn N. Y.

Government's Exhibit 14.

1525

August 4th 1934

Home Owners Loan Corp
#350—5th Ave N Y
Mr Sanner

My dear Sir

Would it be possible for you to assist me to get through my home loan a little more quickly? My debts pile up monthly; and the two mortgage holders worry me to death. I can't really blame them, they have waited long enough.

1526

I assure you I would not trouble you, but I am told you are the Head of Brooklyn Loans; and I figured maybe you would be kind enough to have one of your assistants work on my application and send it through a little quicker.

If you would do this for me, I would be most grateful to you

Very truly yours,

LAURA TERRONE
228 Bergen St
Brooklyn
NY

1527

Government's Exhibit 15.

Application for Home Loan by John Sulfaro.

(Omitted pursuant to stipulation.)

Government's Exhibit 16.

1528

Letter sent to John Sulfaro relative to interest payments and loan.

(Omitted pursuant to stipulation.)

Government's Exhibit 17.

Envelope and Receipt Signed by Defendant.

(Omitted pursuant to stipulation.)

1529

Government's Exhibits 18-19.

Two Letters Signed by Defendant.

(Omitted pursuant to stipulation.)

Government's Exhibits 20-21.

Two Letters Signed by Defendant.

1530

(Omitted pursuant to stipulation.)

Government's Exhibit 22.

Application for Home Loan by Liberata Benemerito.

(Omitted pursuant to stipulation.)

Government's Exhibit 23.

1531

June 5—1934

Received from Liberata Benemtito 1315-69th St—the sum of Fifty Dollars ($75) check refunded $25 by check This Fifty Dollars ($50) paid for Service rendered c/o New York Life Ins Co. Arrears—arranging for Waiving of the Monthly payment for June and payments thereafter to be not more than $60 monthly instead of the present payment of $100 & more monthly Miss Kay also rendering Service in keeping 2nd mtgee to withhold demands until 4 months from date

1532

MISS KAY
1904 Foster Ave

Government's Exhibit 24.

Check in the Amount of $50.00 for Home Loan.

(Omitted pursuant to stipulation.)

Government's Exhibit 24A.

1533

Application for Loan

County Kings
City Bklyn

$.....

1. The undersigned hereby applies to Home Owners' Loan Corporation for a loan in the

Government's Exhibit 24A.

amount required for the purposes stated below, on terms provided in Home Owners' Loan Act of 1933, and represents that all statements made in this application are true, and agree to furnish said Corporation with a first lien on the property herein described, as provided in said Act, if this transaction can be consummated.

2. A full legal description of the property is as follows (Copy from your deed):

W Side W 9 St—270 ft So
from corner intersect of
St Side of st 9—So Side of
Highlawn Av. Party Wall
100 Parallel with Highlawn (Property Diagram.)

Lot 19
Block 6671
Sec 20

3. The street address of the property is 1834 West 9th St.

4. It has street improvements as follows: Sewered and Paved.

5. Property is the home of the undersigned, built for not more than 2 families.

6. The size of the main building is 18 by 62 containing 11 rooms and 2 baths, and none breakfast rooms, and is 2 stories high. Roof is of tar paper. House is semi-detached, is built of material as follows: Stucco; and is 10 years old, in good state of repair. Built-in features are as follows: ..... Plumbing is connected with city water and has fixtures as follows: Galvanized. Waste is connected with city sewer City Heating system is Steam Heat in good condition. The house is connected and equipped with other

Government's Exhibit 24A.

conveniences as follows: Gas, Elec., Parquet, Open Porch. There is no garage built of..... There are outbuildings and other improvements as follows:..... 1537

7. Applicant bought the property on the 27th day of July, 1926 for $12,500.

8. The total encumbrances or liens on the property are as follows:

(a) First mortgage (1) original amount $6750, (2) present amount $6,500, (3) due date October , 1935, (4) interest rate 6%, (5) amount of interest due and unpaid $195, (6) held by Prudential Ins. Co. of America, (7) whose address is Woolworth Building, N. Y. C. 1538

(b) Second mortgage (1) original amount $2,487.00, (2) present amount $850.00, (3) due date past due, 193...., (4) intereste rate 6%, (5) amount of interest due and unpaid $25.50—6 Mos., (6) held by Mamie Marchall, (7) whose address is 306 E. 180th St., Bronx N. Y.

(c) Unpaid taxes for (state periods) Nov. 1933 ..... Total $115.90.

(d) Unpaid assessments for (state periods) 6 instalments. Total $150.00 Bal. 1539

(e) Unpaid water rates for (state periods) 1934. Total $30.00.

(f) State the amount of other liens such as third mortgage & None, unpaid judgments $ None, mechanics liens $ None, other liens $ None.

9. Which, if any, of the above mortgages is now actually under foreclosure? 2nd mortgage.

Government's Exhibit 24A.

1540 10. The purposes for which the applicant desires a loan are as follows: To take care of first mortgage and unpaid interest? $6695.00, second mortgage and unpaid interest? $875.50, other liens $ ....., unpaid taxes? $115.90, unpaid assessments and water rates? $180.00, minimum essential repairs? $.....

11. The title of the property is in the name of Salvatore Iovino & Jennie his wife whose address is 1834 West 9th Street B'klyn.

12. Applicant is 37 years af age, employed by Jacobs Shoe Co., address 170 White Ave., Bklyn. for
1541 the past one year, earnings $15. week per week, is yes married, has 2 dependents and gives references as follows: (Give name, nature of business and address).

NAMES, NATURE OF BUSINESSES, ADDRESSES:

(1) Joseph Gracalone, Grocery, 1893 W. 8th St. Bklyn.

(2) Charles Toto, Grocery, 146 Highlawn Ave. Bklyn.

(3) Joseph Ferra, Barber, 70th Street & 20th Ave. Bklyn.

1542 13. Have you made any other application for a loan to this corporation and if so, when and where? No.

14. State all other real estate owned. No other.

15. I warrant the foregoing information to be true, request the consideration of this application, and agree to pay any cost actually incurred for reasonable appraisal, examination and perfecting

Government's Exhibit 25.

of title, survey, recording, or other necessary ex- 1543
penses such work to be done by my agents, selected by the corporation, and I agree to execute all necessary papers on their usual form as used by the Corporation in connection with the transaction.

This the 16th day of March, 1934.
Address 1834 West 9th St. Bklyn.

Signed SALVATORE IOVINO
Her
JENNIE X IOVINO 1544
Mark

CHARLES S. MAZZANO
(Notary's stamp illegible.)

Government's Exhibit 25.

Letter signed by defendant.

(Omitted pursuant to stipulation.)

1545

Government's Exhibit 26.

Telegrams sent to Home Loan.

(Omitted pursuant to stipulation.)

1546

Government's Exhibit 27.

Card of Defendant.

(Omitted pursuant to stipulation.)

Government's Exhibit 28.

1547

Application for Home Loan by Bertha Redner.

(Omitted pursuant to stipulation.)

Government's Exhibit 29.

Letter written and signed by defendant.

(Omitted pursuant to stipulation.)

1548

Government's Exhibit 30.

Letter written and signed by defendant.

(Omitted pursuant to stipulation.)

Government's Exhibit 31.

1549

APPLICATION FOR LOAN.

Name of applicant Nellie R. Wilson
Address of property 3104 Farragut Rd

No. 16 19 116
$8500
(Total loan requested)

1. The undersigned hereby applies to Home Owners' Loan Corporation for a loan in the amount stated above on terms provided in Home Owners' Loan Act of 1933, and represents that 1550
all statements made in this application are true, and agrees to furnish said corporation with a first lien on the property herein described, as provided in said act, if this transaction can be consummated.

2. Legal Description of Property. Describe briefly how to locate property 1 block Nostrand Ave.

3. Applicant bought land or the completed property 1916 at total cost of $15,000. Making total cost of 2000 total $17,000.

4. The present value is estimated by the 1551
owner as $.....

5. Mortgages or Contracts on Property: Original amount of mortgage 1st mtg 7000 Bond & Mtg Co 175 Remsen St Bklyn $7000.

(a) First mortgage (or contract) Due Dec 1933. Interest due $240.

(b) Second mortgage Due Nov 1933 Principal balance $500 Interest due $50 to Apr 1 1934.

Government's Exhibit 31.

1552 (c) Taxes Due. 2nd 1932 all 1933 all 1934 about $700.

(d) Total encumbrances, assessments, and liens $8500.

6. Repairs necessary. Furnish at least two estimates in detail signed by reputable contractors or repairmen .....

7. Property is the home of the undersigned, built to accommodate 2 (2) families.

8. Applicant is 42 years of age, employed in Florist Business.

9. Reasons for considering this a distress case
1553 Had to remodel house & installed Oil Heat 3 yrs ago. Paid it off. Ran in debt.

10. Are present mortgagees willing or able to continue carrying indebtedness? No—they are demanding money. If not, why? Say they need it.

11. Have you tried to refinance through other channels? Yes. Why unsuccessful? No mtg. money.

12. Are there any judgments against you? No.

13. State whether you have abstracts or title
1554 insurance on property. Yes. Fire insurance $15000.

14. Have you made any other application for a loan to this corporation, and if so, when and where? No.

15. If loan is made is applicant in position to keep up interest and principal payments? Yes.

16. From what source will he secure funds to make these payments? In Florist Business. Business now pretty good.

Government's Exhibit 32.

17. I warrant the foregoing information to be true, request the consideration of this application, and agree to pay any cost actually incurred for reasonable appraisal, examination, and perfecting of title, survey, recording, or other necessary expenses, such work to be done by my agents, selected by the corporation, and I agree to execute all necessary papers on their usual form as used by the corporation in connection with the transaction. This the 1st day of April 1934. 1555

Name Nellie R. Wilson
Mailing address 3104 Farragut Rd 1556
Telephone Mansfield 6-7360

(Two photos of front of building attached to original.)

Government's Exhibit 32.

Mar 29/1934

The undersigned Nellie R. Wilson owner of property 3104 Farragut Rd. engages Miss Kay to render services in contacting first mortgage holder and arranging for deferred payments on arrears of: 1557
interest None
taxes 2nd 1932—all 1933 and 1934
water 1933 and 1934

For such service the undersigned agree to pay Miss Kay Forty Dollars on or before June 1st, 1934.

.....

.....

Government's Exhibit 33.

1558

Federal Bureau of Investigation, U. S. Dept. of Justice—85-96-1 S.

MORTGAGEE'S CONSENT TO TAKE BONDS

To Home Owners' Loan Corporation:

The undersigned is a holder of a 2nd mortgage or other obligation, which constitutes a lien or claim on the title to the home property of Nellie R. Wilson located at 3104 Farragut Rd. Bklyn. N. Y. in the sum of $650 and 1 yr. Int., including
1559 unpaid balance of principal and interest, to date.

Being informed that said owner has made application to Home Owners' Loan Corporation to refund his said indebtedness, the undersigned has considered the method of refunding mortgages provided in Home Owners' Loan Act of 1933, as passed by Congress and approved by the President, and the undersigned hereby consents, if said refunding can be consummated, to accept in full settlement of the claim of the undersigned the sum of $650 and 1 yr. Int., face value of the bonds of Home Owners' Loan Corporation, to be ad-
1560 justed with not exceeding $25 cash and thereupon to release all the claim of the undersigned against said property.

It is understood that the Home Owners' Loan Corporation will incur trouble and expense in connection with its effort to refund the indebtedness of said home owner, and this consent is executed in consideration of the same and shall be binding for a period of 30 days from date, and

thereafter until 10 days written notice shall have 1561
been given the State manager of the Corporation.

This, the 4th day of June, 1934.

G. KAY
1904 Foster Ave.
Brooklyn, N. Y.
Phone Number Mansfield 6/5026

Government's Exhibit 34.

1562

Federal Bureau of Investigation, U. S. Dept. of Justice—85-96-1 F.

Aug. 15–1934

Mr. Loeser

Dear Sir

My Home Loan application which is K 19116 has not yet been closed; although you have it in your New York office since about December, and it is getting so I cannot hold off the Title Co. they are starting to foreclose the house and there 1563
is nothing I can do to stop them. Could you do something to get the matter closed for me before it is too late

I would be most grateful to you if you would do this thing for me.

NELLIE R WILSON
3104 Farragut Road
Brooklyn NY

Government's Exhibit 35.

1564 I did not send this letter, it was sent by Miss Kay of 1904 Foster Ave. Bklyn., N. Y. I did know it was being sent.

NELLIE R WILSON

Mrs. Wilson borrowed money from Miss Kay who loaned money under the name of Rose Klein. Mrs. Wilson received 500– and signed notes for 650 plus interest payable at the rate of 25.00 per month plus interest until paid.

1565

Government's Exhibit 35.

50

MANUFACTURERS TRUST COMPANY
1550 Flatbush Avenue

Brooklyn, N. Y., July 13, 1934

Pay to the order of Rose Klein $25.63 Twenty-five and 63/100 Dollars.

No.....

1566 NELLIE R WILSON

Endorsements:

(In writing) Up to Date Balance $100.00 due on second mortgage

ROSE KLEIN

(Stamp of Receiving Bank.)
(Perforated Stamp—Paid 10-18-34.)

Government's Exhibit 35.

50 1567

MANUFACTURERS TRUST COMPANY
1550 Flatbush Avenue

Brooklyn, New York, Sep 18 1934

Pay to the order of Rose Klein $25.38 Twenty Five and 38/100 Dollars.

No. .....

NELLIE R WILSON

(Perforated Stamp—Paid 9-18-34.)

1568

(On side of check): Payment for 2nd Mortgage Balance Fifty $50.00 Dollars

Endorsements:

(In writing) Rose Klein
(In writing) G. Klein

50

MANUFACTURERS TRUST COMPANY
1550 Flatbush Avenue

1569

Brooklyn, N. Y., Oct 16 1934

Pay to the order of Rose Klein $25.25 Twenty Five and 25/100 Dollars.

No. 12

NELLIE R. WILSON

(On side of check): Balance $25.12

Government's Exhibit 37.

1570

Endorsements:

(In writing) Rose Klein
(In writing) G. Klein

(Stamps of receiving and collecting banks.)
Perforated stamp—Paid 10-18-34.

Government's Exhibit 36.

Application for Home Loan by Jennie Beyer.

1571

(Omitted pursuant to stipulation.)

Government's Exhibit 37.

Paper signed by defendant.

(Omitted pursuant to stipulation.)

1572

Government's Exhibit 40.

1573

Nellie R. Wilson
3104 Farragut Rd Bklyn

The following payment will be due on June 13—1934 upon mortgage covering premises No. 3104 Farragut Rd Bklyn

Instalment of Principal	$25
Interest	$ 75
total	$25 75/xx

1574

Kindly make check or money order payable to the order of Rose Klein and mail same to 1904 Foster Avenue, Brooklyn, New York

Please return this notice when making payment. If you wish a receipt inclose a stamped addressed envelop.

Government's Exhibit 41.

Nellie R Wilson
3104 Farragut Rd

1575

The following payment will be due on Jan 13—1934 upon mortgage covering premises No. 3104 Farragut Rd.

Balance December 1933–Jan 13 1934	1 50/xx
Instalment of Principal	$25
Interest	$1 38
total	$27 88/xx

Government's Exhibit 42.

1576 Kindly make check or money order payable to the order of Rose Klein and mail same to 1904 Foster Avenue, Brooklyn, New York

Please return this notice when making payment. If you wish a receipt inclose a stamped addressed envelop.

Government's Exhibit 42.

Nellie R. Wilson
3104 Farragut Rd

1577

The following payment will be due on Feb. 13th/1934 upon mortgage covering premises No. 3104 Farragut Rd

Instalment of Principal	$25
Interest	$ 1 25
total	$26 25

Kindly make check or money order payable to the order of Rose Klein and mail same to 1904 Foster Avenue, Brooklyn, New York

1578 Please return this notice when making payment. If you wish a receipt inclose a stamped addressed envelop.

Government's Exhibit 43.

1579

Nellie R Wilson
3104 Farragut Rd

The following payment will be due on Apr. 12th/1934 upon mortgage covering premises No. 3104 Farragut Rd

Installment of Principal	$25
Interest	$ 1
total	$26

1580

Kindly make check or money order payable to the order of Rose Klein and mail same to 1904 Foster Avenue, Brooklyn, New York

Please return this notice when making payment. If you wish a receipt inclose a stamped addressed envelop.

Government's Exhibit 44.

Mrs. Wilson
3104 Farragut Rd

1581

The following payment will be due on October 13th upon mortgage covering premises No. 3104 Farragut Rd

Mortgage of $650 of date
Sept 13th—1932.

Instalment of Principal	$25
Interest	$ 3 25
total	$28 25

Defendant's Exhibit A.

1582 Kindly make check or money order payable to the order of Rose Klein and mail same to 1904 Foster Avenue, Brooklyn, New York.

Please return this notice when making payment. If you wish a receipt inclose a stamped addressed envelop.

Defendant's Exhibit A.

Letter of Nathan Hatchpoulos to Defendant.

(Omitted pursuant to stipulation.)

1583

Defendant's Exhibit B.

Letter From Bank to Nathan Hatchpoulos.

(Omitted pursuant to stipulation.)

Defendant's Exhibit C.

1584 Letter dated June 15, 1934 from Home Owners' Loan Corporation.

(Omitted pursuant to stipulation.)

Defendant's Exhibit D.

Letter Signed by Rosa Sciortine on June 20, 1934.

(Omitted pursuant to stipulation.)

Defendant's Exhibit E.

1585

Paper Signed by Liberata Benemerito.

(Omitted pursuant to stipulation.)

Defendant's Exhibit F.

Paper Signed by Salvatore Iovino.

(Omitted pursuant to stipulation.)

1586

Defendant's Exhibit G.

Paper Signed by Husband of Bertha Redner.

(Omitted pursuant to stipulation.)

Defendant's Exhibit H.

Papers Signed by Jennie Beyer and Husband.

(Omitted pursuant to stipulation.) 1587

Defendant's Exhibit I.

Certified copy of statement of City Tax Department showing arrears of taxes on 13014 Farragut Road in April, 1934.

(Omitted pursuant to stipulation.)

1588

Defendant's Exhibit K.

Letter Signed by Mrs. Terrone's Daughter.

(Omitted pursuant to stipulation.)

Defendant's Exhibit L.

1589

Doctor's certificate as to physical condition of Mr. Aronowitz.

(Omitted pursuant to stipulation.)

Defendant's Exhibit M.

Receipt for $25 Signed by Defendant.

(Omitted pursuant to stipulation.)

1590

Defendant's Exhibit N.

Form Letters Sent to Home Owner.

(Omitted pursuant to stipulation.)

Stipulation as to Exhibits.

1591

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

1592

IT IS HEREBY STIPULATED AND AGREED that the Government's Exhibits 1, 2, 5, 6, 7, 8, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 36 and 37 and the Defendant's Exhibits A to I, inclusive and K to N, inclusive, which were marked in evidence on the trial of this action, be and the same are hereby omitted from the printed record and that a statement be printed in lieu thereof.

IT IS FURTHER STIPULATED AND AGREED that these exhibits may be handed up on the argument of this appeal with the same force and effect as 1593
though incorporated herein.

Dated, New York, October 17th, 1936.

FRANK R. SERRI,
Attorney for Defendant-Appellant.

LEO J. HICKEY,
United States Attorney.

Stipulation Settling Bill of Exceptions.

1594

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

1595

IT IS HEREBY STIPULATED AND AGREED that the foregoing contains all the testimony and exceptions made at the trial of this case, and that the same may be settled and ordered on file as the bill of exceptions herein.

Dated, New York, October 17th, 1936.

FRANK R. SERRI,
Attorney for Appellant.

LEO J. HICKEY,
United States Attorney.

1596

Order Settling Bill of Exceptions.

Upon the foregoing stipulation, it is ordered that the foregoing may be settled and ordered on file as the bill of exceptions herein.

Dated, New York, October , 1936.

MATTHEW T. ABRUZZO,
U. S. D. J.

Order Extending Time to File Bill of Exceptions to October 13, 1936.

1597

At a Term of the United States District Court, held in and for the Eastern District of New York, at the United States Court House, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 25th day of September, 1936.

Present—HON. GROVER M. MOSCOWITZ,
District Judge.

1598

UNITED STATES OF AMERICA

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN.

Upon the annexed affidavit of F. R. Serri, duly verified September 25th, 1936 and the consent of the attorneys for the respective parties, it is

ORDERED, that the time of the appellant to file her bill of exceptions and assignment of errors be and is hereby extended to October 13, 1936. 1599

GROVER M. MOSCOWITZ,
U. S. Dist. Judge.

Order Extending Time to File Bill of Exceptions to October 19th, 1936.

1600

At a Term of the United States District Court, held in and for the Eastern District of New York, at the United States Court House, in the Borough of Brooklyn, County of Kings, City and State of New York, on the 13th day of October, 1936.

Present—HON. MATTHEW T. ABRUZZO,
District Judge.

1601

UNITED STATES OF AMERICA

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN.

Upon the annexed affidavit of F. R. Serri, duly verified October 13th, 1936 and the consent of the attorneys for the respective parties, it is

ORDERED that the time of the appellant to file
1602 her bill of exceptions and assignment of errors be and is hereby extended to October 19th, 1936.

MATTHEW T. ABRUZZO,
U. S. District Judge.

Notice of Appeal.

1603

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

Docket No. C 36222.

UNITED STATES OF AMERICA,

—against—

GERTRUDE KAY, Alias Gertrude Klein,

Defendant.

1604

Name and Address of Appellant: Gertrude Klein, 1904 Foster Avenue, Brooklyn, New York.

Name and Address of Appellant's Attorney: F. R. Serri, 66 Court Street, Brooklyn, New York.

Offense: Violation of Title 12 U. S. Code, Section 1467 (a) and 1467 (e) of the Home Owners Loan Act, as amended, April 27, 1934.

Date of Judgment: May 26th, 1936.

Description of Judgment or Sentence: 5th Count, 1 year & 1 day; 8th, 2 years probation, suspended sentence; 12th, 1 year & 1 day; 14th, 1 year & 1 day; 15th, 1 year & 1 day; 20th, 1 year & 1 day; 24th, 1 year & 1 day; 25th, 1 year & 1 day, to run concurrently.

1605

Prison where now confined: Federal Detention Prison For Women in Manhattan.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for

1606 the Second Circuit from the Judgment above mentioned on the grounds in the statement to be hereafter submitted and annexed hereto.

GERTRUDE KAY,
Appellant.

Dated: May 26th, 1936.

STATEMENT OF GROUNDS OF APPEAL.

1607 1. That the Home Owners' Loan Act enacted by Congress June 13th, 1933, and amended April 27th, 1934, is unconstitutional as beyond the power of Congress to enact.

2. That Title 12, U. S. Code Section 1467 (a) and (e) of the Home Owners' Loan Act of 1933, as amended April 27th, 1934, are invalid as violating both the 5th and 6th amendment of the Constitution of the United States.

3. That Title 12, U. S. Code Section 1467 (e) of the Home Owners' Loan Act of 1933, as
1608 amended April 27th, 1934, is invalid as constituting an unlawful delegation of power by Congress to the Home Owners' Loan Corporation.

4. That the Court erred in refusing or in modifying the defendant's written requests to charge numbered 4 to 12 inclusive.

5. That the Court erred in denying the defendant's motion to dsmiss the entire 22 counts

at the end of the government's case as well as at the end of the entire case. 1609

6. That the Court erred in admitting testimony of other transactions not included in the indictment, but of a similar character.

7. That there was not sufficient evidence to warrant the submission to the jury of any of the issues presented under the indictment.

8. That the Court erred in its charge to the jury after it returned for additional instructions and by its statement at midnight that it would lock them up if they did not arrive at a verdict by 12:30 A. M.—after having been out about seven hours—improperly influenced their deliberations and practically coerced a compromise verdict. 1610

9. That the Court erred in improperly restricting the time of the defendant's counsel to sum up.

10. That the conduct of the court in examination of defendant and other witnesses indicated an obvious bias and hostility to the defendant and deprived her of a fair trial.

1611

11. That the conduct of the assistant district attorney in his opening to the jury, in his repeated efforts to introduce and to refer to matters already ruled out by the Court and in his closing, constituted unfair and prejudicial prosecution of the defendant, and deprived her of a fair trial.

12. That the Court erred in refusing to dismiss the 11th and 12th counts, although the undis-

puted evidence showed that when the contract was made and the services rendered the owner was not an applicant for a loan, and that the defendant had paid back the $50.00 and withdrawn from the entire transaction long before the owner finally filed her application.

13. That the Court erred in refusing to dismiss the 1st, 2nd and 3rd counts, although the evidence conclusively established that the property was not occupied by the owner as her home, and this error was not cured by the fact that the jury found the defendant not guilty on these three counts, because these three counts together with the other eleven counts on which they found her not guilty, became a factor in producing a compromise verdict to the prejudice of this defendant.

14. That the Court erred, after admitting the check sent by the defendant to Mr. Losee by excluding the letter which he wrote in returning the check to the defendant.

15. That there is no substantial evidence to support the verdict and judgment of conviction.

Amended Assignment of Errors.

1615

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

1616

Now comes Gertrude Kay, alias Gertrude Klein, the defendant in the above entitled action, averring that in record of the proceedings, and in the final judgment entered herein on May 29th, 1936, manifest errors were committed to the prejudice of the said defendant, to wit:

First: The Home Owners' Loan Act enacted by Congress June 13th, 1933, and amended April 27th, 1934, is unconstitutional as beyond the power of Congress to enact.

1617

Second: Title 12, U. S. Code, Section 1467 (a) and (e) of the Home Owners' Loan Act of 1933, as amended April 27th, 1934, are invalid as violating both the 5th and 6th Amendments of the Constitution of the United States.

Third: Title 12, U. S. Code, Section 1467 (e) of the Home Owners' Loan Act of 1933, as amended April 27th, 1934, is invalid as consti-

1618 tuting an unlawful delegation of power by Congress to the Home Owners' Loan Corporation.

Fourth: The Court erred in modifying the fourth request of the defendant and instructing the Jury as follows:

"The fourth request by the defendant is as follows: That since the mortgagees retained all their rights to sue on their bond and mortgages, notwithstanding the Home Owners' Loan Corporation Act, the owners, although applicants for loans, necessarily re-
1619 tained all their rights to negotiate with their mortgagees, and to do so through representatives of their own choosing.

I will charge that, Mr. Serri, but in that connection you must apply the rules with respect to the Home Owners' Loan Corporation, which I have given to you, Gentlemen, and that is all of the rules. You have heard all this testimony of what fees they were entitled to charge and what fees the Government allowed to be charged. You must take that all into consideration in determining
1620 that request and in determining the whole case."

Fifth: The Court erred in modifying or qualifying the Fifth request of the defendant and in instructing the jury as follows:

"That the owner, although an applicant for a loan, was left free to contract for the service of his own representatives for the

purpose of negotiating to change the terms 1621
of payments on any existing mortgage, to stay threatening foreclosures or to reduce the principal of any existing encumbrance.

That is true, Gentlemen, but you have to take all the conditions which I gave you in my charge, and I ought to add there, with respect to the Home Owners' Loan Corporation. The law which I have read to you applies only to that corporation and to no other, and you are not to consider in this case what the rules and regulations of other corporations were. You are to consider only 1622
what the rules and regulations of the Home Owners' Loan Corporation were with respect to the laws which I have read to you and only that."

Sixth: The Court erred in refusing to charge the Sixth request of the defendant, except as already charged:

Request No. 6: "That the payment by the owner applicant for services in negotiating with mortgagees may have been contingent on the closing of the Home Owners' Loan Corporation loan does not affect validity of 1623
contract where the defendant or agent contracted and charged solely for services in contacting mortgagees."

Seventh: The Court erred in refusing to charge the Seventh request of the defendant, except as already charged:

Request No. 7: "That the business of a

1624 real estate and mortgage broker, such as that of the defendant, is a local business beyond the control of Congress and which Congress did not intend to restrict or regulate in so far as it related to foreclosures, adjustments, stays and reduction of mortgages."

Eighth: The Court erred in refusing to charge the Eighth request of the defendant, except as already charged:

1625 Request No. 8: "As to the two alleged false statements as to the amounts due on the two second mortgages, Terrone and Wilson, if the Jury find that the defendant did not know the correct amount, and that the incorrect amount was inserted solely as the result of a careless act, then the defendant has not violated the law."

Ninth: The Court erred in refusing to charge the Ninth request of the defendant, except as already charged:

1626 Request No. 9: "As to the two alleged false statements as to the amounts due on the two second mortgages, Terrone and Wilson, if the Jury find that the defendant did not make these statements with the purpose of influencing the action of the Home Owners' Loan Corporation, then the defendant has not violated the law."

Tenth: The Court erred in refusing to charge

the Tenth request of the defendant except as already charged: 1627

> Request No. 10: "As to the first, second and third counts of the indictment, namely, those relating to Esther Dostis, if the jury find that the property, 2289 Coney Island Avenue was not occupied by the said Esther Dostis as her home, then the defendant is not guilty under these three counts."

Eleventh: The Court erred in modifying or qualifying the Eleventh Request of the defendant and instructing the jury as follows: 1628

> "No. 11, as it relates to the Benemerito evidence, which I did not go over in detail, I will read to you, gentlemen. 'As to the eleventh and twelfth counts, namely, those relating to Liberata Benemerito, if the jury find that the defendant made her contract on June 5, 1934, and on June 11, 1934, paid over the $50. to the first mortgagee, and withdrew from this transaction on June 11, 1934, and that the owner at that time had not applied to the Home Owners' Loan Corporation for a loan and in fact applied for the first time on June 29th, 1934, the defendant is not guilty under these two counts.' 1629
>
> I charge that is so, Gentlemen, but that is only a part of the Benemerito evidence. I will charge those facts, but I say to you, in those eleventh and twelfth counts, that you have to take into account all the other facts that were testified to by the other witnesses

1630 in determining whether or not she is guilty or innocent on the eleventh and twelfth counts."

Twelfth: The Court erred in refusing to charge the Twelfth request of the defendant, except as already charged:

Request No. 12: "As to all the counts for soliciting, contracting and receiving, if the jury find that the only services for which the defendant charged the owner applicants, were
1631 for contacting mortgagees, adjusting terms of payment on their mortgages, staying foreclosures and reducing the amount of existing mortgages, the defendant is not guilty under these counts."

Thirteenth: The Court erred in instructing the jury as follows:

"The law with respect to the false statement may be summarized briefly as follows, gentlemen, and pay attention to this, for it will dispose of those two counts in so far as
1632 the law is concerned:

'Whoever makes any statement knowing it to be false, or whoever wilfully overvalues any security for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an Association upon an application for a loan is guilty of a violation of the law made and provided in that case.'"

Amended Assignment of Errors.

Fourteenth: The Court erred in instructing 1633
the jury as follows:

> "The filing of these applications comes squarely within title 12, Section 1467, subdivision (a), which I have read to you and it is for you to determine, gentlemen, whether the defendant made these statements in these applications knowing the same to be false or wilfully overvalued the security which she owned and controlled in the property wherein the owner sought to obtain the Home Loan."

Fifteenth: The Court erred in instructing the 1634
jury as follows:

> "That is very simple isn't it? If she did knowingly and wilfully, with the design to get that money from the government, you may say that she is guilty on these two counts of falsefication. If she did not, then you must say she is not guilty."

Sixteenth: The Court erred in instructing the jury as follows:

> "If the defendant Gertrude Kay, made 1635
> agreements to reduce mortgages for which she was to receive a consideration, depending upon the Home Owners' Loan Corporation to make a loan, and you find further that she was to render some service in the obtaining of the loans and made these agreements without saying anything about the service that she was to render with respect to obtaining

1636 the loans, you may say that those agreements were a subterfuge on her part to hide the fact that she was to render some service in the obtaining of the loans. And if you find that is the fact from all this evidence, then you may say that she violated that second law or some of the terms or parts of it, as I have read it."

Seventeenth: The Court erred in instructing the jury as follows:

1637 "The business of a real estate and mortgage broker, such as that of the defendant, is a local business beyond the control of Congress and which Congress did not intend to restrict or regulate in so far as it related to foreclosures, adjustments, stays and reduction of mortgages, provided they did not come within the Home Owners' Loan Corporation, that was the one exception."

Eighteenth: The Court erred in instructing the jury as follows:

1638 "I told you in my charge that if she entered into these contracts with persons who had made applications for loans to help reduce first and second mortgages or third mortgages as a subterfuge to hide her activities in the application for the loan, that that would come under that section of the law which I read to you, the second section, and would be a violation of that statute."

Amended Assignment of Errors.

Nineteenth: The Court erred in instructing the jury as follows: 1639

> "Now in determining that question you must take in consideration all the testimony * * *, and that is eventually where was the money going to come from that paid her for these contacts or contracts that she had with these first and second mortgage holders * * *."

Twentieth: The Court erred in instructing the jury at 11:50 P. M., as follows: 1640

> "Now, then, the hour is getting late, I don't want to coerce you or force you into a verdict, but, of course, if you don't agree by half past twelve, I am afraid I will have to lock you up for the night."

Twenty-first: The court erred in denying the defendant's motion to dismiss the entire 22 counts at the end of the government's case as well as at the end of the entire case.

Twenty-second: The Court erred in admitting testimony of other transactions not included in the indictment, but of a similar character. 1641

Twenty-third: There was not sufficient evidence to warrant the submission to the jury of any of the issues presented under the indictment.

Twenty-fourth: The Court erred in improperly restricting the time of the defendant's counsel to

1642 sum up. Time limited to one hour and twenty-five minutes.

Twenty-fifth: The conduct of the Court in the examination of defendant and other witnesses and in the allowance and exclusion of evidence indicated an obvious bias and hostility to the defendant and deprived her of a fair trial:

(1) Direct examination by District Attorney, of Mrs. Sciortino:

"Q. Was anything said about a month?

1643 The Court: Was anything said about the time?

A. In about a month's time I will get the loan.

The Court: But who said that?

The Witness: Miss J. Kay."

(2) Cross examination of Miss Gregor by Defendant's Attorney:

"Q. In September, 1934, had you told Miss Kay the exact amount of the balance that was due on that mortgage? A. I was quite ill.

1644

Mr. Scileppi: I object to that, if your Honor please.

Mr. Serri: Very important, it seems to me.

The Court: That is the mortgage——

Mr. Serri: That was introduced, the consent signed by the defendant, which states $590. That is an incorrect amount. We admit it is an incorrect amount. I

am asking her whether she knows, what was the correct amount, because she was keeping—— 1645

The Court: Objection sustained.

Mr. Serri: Exception.

Q. For a period there in 1934 were you away from home and sick, in the hospital? A. Yes, sir, I was.

Q. During that time were you able to communicate to your sister the correct amount due on that mortgage? A. No, sir.

Mr. Scileppi: I object to that, if your Honor please. 1646

The Court: Sustained.

Mr. Serri: Exception."

(3) Direct examination by District Attorney of Mrs. Terrone:

"Q. Was there anything said about money? A. She says my work is $50., talk it over with the children and I come back in a few days.

The Court: Who said that?

The Witness: Miss Kay." 1647

(4) Direct examination by District Attorney, of Mrs. Benemerito:

"Q. Wasn't she to fix up the application?

Mr. Serri: I object to putting that in her mouth that way.

The Court: We will see.

1648 Mr. Serri: This is greatly prejudicial. She hasn't testified that way at all. She has testified no, that is all and then he puts in something else.

Mr. Scileppi: Then——

Mr. Serri: No, that is highly prejudicial.

Mr. Scileppi: We have an affidavit signed by this lady.

Mr. Serri: I object to that, Judge."

(5) Direct examination by District Attorney of Mrs. Benemerito:

1649 "Q. And you gave her a $75. check, didn't you? A. Yes.

Q. Where did you get this check from? A. From the City.

Q. For what?

Mr. Serri: I object, your Honor. Is that material?

The Court: It doesn't matter one way or the other.

Mr. Serri: It does. It is an inflammatory question, because it is a pension check. It is very prejudicial.

1650 Mr. Scileppi: You are saying it is prejudicial.

Mr. Serri: No, no. In your opening you made a great deal about that.

The Court: But you men must remember you have a jury here. I wouldn't consider it prejudicial. The fact is she got $50. Let us see how the transaction was made. I will charge the jury that they

should not be prejudiced. We are trying to 1651
get the facts in the regular order. You cannot get it in the middle and then stop."

* * * * * * *

The Court: I overrule your objection.

Mr. Serri: Exception.

* * * * * * *

A. For the children.

The Court: All right; that is all.

A. (Continuing.) The City sent it to me for the children."

(6) Direct examination by District Attor- 1652
ney of Mrs. Benemerito:

"Q. Now, when you gave that money to Miss Kay was there anything said about how quick the application would be made for the loan?

Mr. Serri: I object to that, the form, putting in the mouth of the witness the words. A very suggestive and prejudicial thing.

The Court: Yes, you may change the form. 1653

* * * * * * *

Q. How quickly was Miss Kay to get the Home Loan for you when you gave her that check?

Mr. Serri: I object to that.

The Court: Sustained.

Q. Did Miss Kay say anything as to

1654 how long you would have to wait before you could get the Home Loan?

Mr. Serri: I object to that.
The Court: I will allow it.
Mr. Serri: Exception."

(7) Direct examination by District Attorney of Mrs. Benemerito:

"Q. Did Miss Kay ever say that she would fix up things with the Home Owners' Loan Corporation?

1655 Mr. Serri: I object as highly prejudicial. At this time I am going to ask for a mistrial, if this keeps up.

The Court: You are not going to get it, so you might as well not ask for it. I have ruled the question out.

Mr. Scileppi: I withdraw it."

(8) Cross examination of Mr. Iovino:

"The Court: Did she say she would get you a Home Loan.

The Witness: She said she would try to help."

1656 (9) Re-direct examination of Mr. Iovino by District Attorney:

"Q. Tell us what was said. Did she read it to you? A. Yes, she read it to me.

Q. She read it to you? A. Yes.

Q. What did you understand it to mean when she read it to you?

Mr. Serri: I object to that.

The Court: What did she say when she read it to you, that is the question, as near as you can remember? What did she say to you when she read that paper? 1657

Mr. Serri: I object to that, your Honor.

A. She told me to give her a hundred dollars——

Mr. Serri: Exception.

A. (Continuing.) —to help out with Home Loan, when everything was through.

The Court: I think that is all right.

Mr. Serri: Exception." 1658

(10) Direct examination of Mrs. Redner, by District Attorney:

"Q. When you met her was there some discussion with respect to the condition of your home and the obtaining of a Home Loan? A. Yes.

Q. What did you say to her and what did she say to you? A. She said to me that—

Mr. Serri: I object to that, your Honor, leading.

The Court: I will allow it.

Mr. Serri: Exception. He immediately puts in the sing-song about the Home Loan, about the Home Loan, about the Home Loan. 1659

Mr. Scileppi: Now, wait——

Mr. Serri: Runs like a sing-song all through all of the questions.

Mr. Scileppi: It is a Home Loan case.

Mr. Serri: Now, if your Honor please,

1660 what conversation did you have with Miss Kay on such-and-such a date? Let us have it that way. That is the way to go about it, not to implant, did you say something about the Home Loan?

Mr. Scileppi: Just cool off, Mr. Serri.

Mr. Serri: No, it is highly prejudicial. That is why I am not cool."

(11) Direct examination of Mrs. Beyer by District Attorney:

"The Court: For getting the Home Loan?

The Witness: Yes."

1661

(12) Direct examination of Mrs. Beyer by District Attorney:

"The Court: Suppose I get it. Mrs. Beyer, you say that she told you that she was charging you $250. for getting the Home Loan?

The Witness: Yes, sir.

* * * * * * *

The Court: For getting that Home Loan, $250. fee, for a moment?

The Witness: Yes.

* * * * * * *

1662

The Court: Was that outside of the $250.00 for the Home Loan?

The Witness: She told me that in the beginning yes, sir, and then after that she told me it was $250."

(13) Cross examination of Mrs. Beyer:

"Q. But why did you say because it was contrary to the Home Owners' Loan regula-

tions? A. Well, contrary, that is just a word, maybe. Why keep harping on the one word in the English language? I do not see—— 1663

The Court: She has been sitting around here for two days, you know. They form opinions while sitting in the court room too, you know.

Mr. Serri: That may be, Judge. On the other hand, it may have been implanted in her mind. That is what I am trying to get at."

(14) Direct examination of Mr. Fletcher by District Attorney: 1664

"The Court: Mr. Craven interrogated her about some complaints that you had?

The Witness: Yes.

Mr. Serri: I object to your Honor's use of the term 'complaint'. There was no complaint by any of these people.

The Court: All right; you can have your exception.

Mr. Serri: Exception."

(15) Direct examination of Mr. Bradie by District Attorney: 1665

"By the Court:

Q. Did you know Miss Kay at any time when you closed this loan had a lien of $250. for services rendered on the reduction of those two mortgages? A. I did not.

Q. Were you told that by Miss Kay? A. She did not.

1666 Q. Were you told by Mrs. Beyer or Miss Kay that Miss Kay was to get $10 a month as a payment on that lien after this mortgage was put on by the Government? A. I was not."

(16) Direct examination of M. Losee by defendant's attorney:

"Q. Do you know, did she cooperate and contact the first mortgagee to obtain a reduction? A. I know that she so stated to me.

1667 Mr. Scileppi: Now——

The Court: Strike that out."

(17) Cross examination of Mr. Losee by District Attorney:

"Mr. Scileppi: I object to the letter going in evidence, if your Honor please, on the ground that it is not—on the ground that there are other matters in the letter not connected with this case.

The Court: Sustained.

Mr. Serri: Exception."

1668 (18) Direct examination of Mr. Moffatt by defendant's attorney:

"Q. Do you know of your own knowledge whether Mrs.—Miss Kay, contacted your company with reference to the reduction of the amount what you were to claim?

The Court: Now, wait a minute. That question is ruled out. You see, Mr. Serri, you see——

Mr. Serri: I asked of his own knowledge 1669
whether he knew.

The Court: You did not say——

Mr. Serri: I did, your Honor.

The Court: Read the question.

(Reporter repeated last question.)

Mr. Serri: I said of your own knowledge, do you know?

The Court: Now, the question is ruled out because it invites hearsay testimony. He might answer, I know it because——"

(19) Direct examination of Mr. Moffatt by defendant's attorney: 1670

"Mr. Serri: I asked him directly, do you know of your own knowledge? I don't know of any other way to ask a question like that Judge.

The Court: Yes, directly, because you have been inviting hearsay evidence all the time.

Mr. Serri: I have not.

The Court: Take your exception.

Mr. Serri: Exception.

The Court: You may ask this witness the question directly that you want, otherwise you won't get the evidence. 1671

Mr. Serri: I take exception to your Honor's remark.

The Court: Take your exception.

Mr. Serri: Exception."

(20) Direct examination of Miss Klein by defendant's attorney:

"Q. When you put $590. down in that

consent did you have the purpose of influencing the Home Owners' Loan Corporation?

Mr. Scileppi: I object to that, if your Honor please. I think that the paper will speak for itself.

The Court: I sustain the objection."

(21) Direct examination of Miss Klein by defendant's attorney:

"The Court: Then when the insurance company spoke about the mortgage, you paid them that $50. on account of their mortgage?

The Witness: Your Honor——

The Court: Is that right?

The Witness: Please let me tell things my own way. You have given everybody else a chance here.

The Court: I cannot do that. I must ask you questions.

The Witness: I cannot answer that way.

The Court: You did turn over the $50.?

The Witness: When he said he would —he insisted on the payment remaining as was; I gave him the $50. because I failed to do anything for that woman.

The Court: Why didn't you give it back to Mrs. Benemerito, because she gave it to you?"

(22) Cross examination of Miss Klein, by Court:

"The Court: Might I ask you, Miss Kay: That mortgage money would have come to you, wouldn't it, that $500?

The Witness: No, sir, your Honor, it would not." 1675

(23) (Same:)

"The Court: So, if the Government did lend the full amount of money, that money would have gone to you, wouldn't it?

The Witness: They never loan the full amount, never. You cannot bring one instance here where they did.

The Court: You see, I am just trying to get the operation of your mind at that time, Miss Kay.

The Witness: The operation of my mind was to get what was coming to me and there was small hope." 1676

(24) (Same:)

"Q. You knew if the Government paid that mortgage off in full that you would have got $500. is that right? A. No, sir, I—may I explain that, your Honor?

Q. No, please. You look at the figure, $500., there. A. Yes.

Q. That is the only figure I mean. A. Yes, sir.

Q. That is your mortgage? 1677

Mr. Scileppi: It is $650.00.

The Court: On her application it is $500.

A. Yes, that is my figure.

Q. That is your own handwriting? A. That is correct.

Q. And you knew if the Government

1678 loaned that full $500. you would have gotten that check? A. Yes—if you will let me explain that. It cannot be answered with a yes or no, your Honor."

(25) (Same:)

"Q. The money would have come to you? A. Providing the home owner did not protest.

Q. But the home owner said you told her you would adjust with her and give her the money, is that right? A. No, your Honor, that is not what I said.

1679 Q. Well, she says that you were to take only $150. but you were to give her the $350. is that correct? A. May I explain how that was said?

Q. Yes. A. Please, your Honor.

Q. Describe it. A. When I put down the figure of five hundred, she says that it cannot be that much. 'Well', I said, 'we won't get it anyhow.' I said, 'We will be lucky if they will grant 70 per cent. of what you owe, and,' I said, 'furthermore, if there is any left over, which I doubt,

1680 it will be allowed to you for repairs.'

Q. But you would get the money? A. I would have never taken it."

(26) (Same:)

"Q. You knew that the money would come to you? Whatever adjustment you would make later on, I am not asking about that. A. If I insisted upon claiming it at the time of the closing, yes. At

the time of the closing, it is customary for 1681
the closing attorney——

Q. Please, you have told us that. You were a real estate woman, weren't you? You knew— A. It doesn't look like it now.

Mr. Serri: You are asking for the operation of her mind, and she is trying to tell you exactly what she thought, that she hadn't the faintest idea that there would be any surplus at all; she knew there would be no surplus; therefore, she didn't even stop to think of the surplus. 1682

Q. Did you know there would be no surplus at the time you put that $500 in? A. Yes, because the indebtedness on the property exceeded what I considered the value."

(27) (Same):

"Q. Then why did you put $500 if you knew there wouldn't be a surplus? A. I put that down. They give you whatever they want to.

Q. Do you mean to tell this jury that 1683
in this application you put down any figure that comes to your mind and then you thought of adjusting that later? A. No, that is not what I mean to tell them.

Q. Be careful of what you say. A. That is what I had in the two applications on file.——

Mr. Serri: Louder. The jury cannot hear you.

1684 Q. In this Wilson thing you put down $500 knowing at the time you put it down that you would not get it, is that right? A. They would not get it.

Q. That is what you say now? A. That is the truth."

(28) (Same):

"The Court: You lent the mortgage on that house, the third mortgage?

The Witness: No, second mortgage.

The Court: All right, second mortgage. If you knew that the house was not worth
1685 the first mortgage, you still lent the second mortgage?

The Witness: Not on the value of the property. Her husband was in business. He was a florist."

(29) (Same):

"The Court: Let me ask: if they paid off your loan, you would feel sorry for citizens too if it wasn't due too?

The Witness: I did not mean to imply that. What I meant was, if they ap-
1686 praised that woman's house at $16,000——

Mr. Serri: Louder, please.

The Court: Please answer the question, Madam. If you got $650 on your mortgage that you weren't entitled to you would still feel sorry?

The Witness: I wouldn't have accepted it.

The Court: If they gave it to you you wouldn't have accepted it?

The Witness: It wasn't coming to me." 1687

(30) (Same):

"The Court: How did they arrive at their loans?

The Witness: Your Honor, I don't know. In almost every case I have been in there has been a deficit.

The Court: No, no, there must have been something. They must have taken their figures from somewhere, is that right?

The Witness: Yes.

The Court: Now, you were up there and you knew something about those loans, is that right? 1688

The Witness: I did not know anything about their appraisal department or how they functioned there."

(31) (Same):

"The Court: Let the Government pay it?

The Witness: Yes."

(32) Cross examination of Miss Klein by District Attorney:

"Q. And it could not close because you would not take a reduction? 1689

Mr. Serri: I object, if your Honor please, not material.

Q. That is right? A. I would not take $50 or $72.50 for $285 or more.

Mr. Serri: I move to strike it out as not material to any issue in this case.

The Court: I will let it stand."

1690

(33) Cross examination of Miss Klein by District Attorney:

"A. No, he did not dictate that in my presence. The first time I have seen it, Mr. Scileppi.

Mr. Serri: Please, Miss Kay, I want to object to all this line of questioning. A person who has a mortgage as she did, a third mortgage, has a perfect right to bargain as she pleases to get her money back; whether she wanted the entire amount or three or five dollars is not in issue here;

1691

outside of the issues.

The Court: I am taking it as part of her general cross examination to get the whole picture.

Mr. Serri: I object. Exception.

The Court: You may have your exception."

(34) Cross examination of Miss Klein by District Attorney:

"Q. Did Mr. Rudd tell you that the only amount, the only amount necessary in order to close that loan was a reduction of about

1692

$88 on your mortgage? A. No, sir.

Mr. Serri: I object to that. Please, Miss Kay.

The Court: I will take that.

Mr. Serri: Exception."

(35) Cross examination of Miss Klein by District Attorney:

"Q. So that finally, after prevailing upon

the first mortgagee to take a cut, you were able to get $200.00 out of a total mortgage of $288, weren't you? A. After the work that I did, yes. 1693

Mr. Serri: I object, your Honor. It is not material what she obtained on the third mortgage. That is a perfect legal right.

The Court: And in addition to that you got half of what you saved, of what you could save on the first mortgage?

Mr. Serri: I object she did not receive a penny, and a loss of $120 on her third mortgage. 1694

The Court: You have a contract, haven't you?

The Witness: Well, for what it is worth. That woman didn't pay mortgages.

The Court: You had the contract, didn't you?

The Witness: Yes.

The Court: And you intended to collect, if you could?

The Witness: I had a swell chance.

The Court: Now.

The Witness: I am sorry." 1695

(36) Cross examination of Miss Klein by District Attorney:

"Q. You know there are quite a number of other cases you have not been questioned about here, Miss Kay.

Mr. Serri: I object to that, if your Honor please.

The Witness: I am willing to answer that.

1696 The Court: I will allow it.

Mr. Serri: Exception.

Mr. Scileppi: I am going to question her about it soon.

The Court: I am going to take it, so you may take your exception.

Mr. Serri: Exception."

(37) Cross examination of Miss Klein by District Attorney:

"The Court: If that were so, why not tell the truth about it, Miss Kay?

Mr. Scileppi: Pardon me?

1697 The Court: All right, I withdraw the question.

Mr. Scileppi: I did not hear.

The Court: Never mind. I withdraw the question."

(38) Cross examination of Miss Klein by District Attorney:

"Q. And that was money the City had given to her to support her children with?

Mr. Serri: I object. He has been harping on this time after time and time after

1698 time; that is absolutely unfair and I object.

Q. Is this the check——

The Court: Gentlemen, the fact that it is a City check is a fact, but do not attach any more importance to it than if it was cash brought out of her pocket."

(39) Cross examination of Miss Klein by District Attorney:

"Q. At the time you deposited it, did you 1699
know where the check had come from?

Mr. Serri: I object, your Honor.

A. Department of Finance——

Mr. Serri: Notwithstanding your Honor's instruction that it has nothing to do with it, he keeps on harping. I say that is highly prejudicial to the defendant, your Honor.

The Court: I do not think it is.

Mr. Serri: It is. Why does he keep it up, if it is not? 1700

The Court: You keep repeating the remark that it is prejudicial.

Mr. Serri: I am not, but he is deliberately making it prejudicial. I don't want to move for a mistrial at this stage of the game, but another unfair effort like that, and I will demand a mistrial.

The Court: When we come to that, you may make it."

(40) Cross examination of Miss Klein by District Attorney:

"Q. Then when you proceeded to do any 1701
work in connection with these reductions, it was with the fact in mind that you wanted the Home Loan to close, wasn't it?

Mr. Serri: I object.

The Court: Overruled.

Mr. Serri: Exception."

(41) Cross examination of Miss Klein by District Attorney:

1702 "Q. Did you hear Mrs. Bertha Redner say that you had not saved her anything? A. You heard what Mr. Moffatt said.

Mr. Serri: Please, Miss Kay. That is not correct. Mrs. Redner admitted reductions were made on the first mortgage.

The Witness: And on the second mortgage.

Mr. Scileppi: She did not admit anything of the kind.

Q. Now, you say that every lawyer was doing the same thing at that time? A.
1703 This building would not be large enough to house all the lawyers that have done the very work I have done.

The Court: Suppose you name some of them to me? Put them on this record. I have heard you say that before.

The Witness: That is the truth.

The Court: You name the lawyers that you know of that are doing this business up at the Home Loan Corporation right on the record, and I will assure you that every one of them will be investigated.

1704 Mr. Serri: I object.

The Witness: That is the truth.

Mr. Serri: Miss Kay, please. I object to your Honor's comment. She did not say any lawyers were doing work up at the Home Owners' Loan Corporation.

The Court: That is the only place in which we are interested.

Mr. Serri: Of course, she did not do it

up there. She meant she has met other attorneys—— 1705

The Court: At the Home Owners' Loan?

The Witness: Not at the Home Owners' Loan, but for clients in Home Owners' Loan matters.

The Court: Please, you have made this rather clear. Do you know any lawyers that are doing this kind of work at the Home Owners' Loan Corporation?

The Witness: Not at the Home Owners' Loan Corporation. In their own offices for clients.

1706

The Court: Private loans are different things.

The Witness: Not private loans, home loans.

Mr. Serri: But in their offices.

The Court: I meant, not with the Home Loan Corporation.

The Witness: I mean with the Home Loan Corporation.

The Court: You name those lawyers.

The Witness: Do you suppose I would?

The Court: I am asking you to name them.

1707

The Witness: Your Honor, there are hundreds of them that come up to the Home Loan offices every day to intercede for home owners.

Mr. Serri: Since your Honor has asked the question, I am going to refer you to the case of Romano, where the lawyer sued for services and recovered for services. That is a matter of public knowledge, it is a matter of public record.

1708 Mr. Scileppi: That is going beyond the pale.

The Court: Lawyers have a right to go to the Home Owners' Loan Corporation, and the statute, I will charge you, will tell you that with certain limitations, that clears this point exactly.

Mr. Serri: No, no, if your Honor please——

The Court: That is my charge, and that is the way I am going to charge the jury.

Mr. Serri: I am not discussing the charge. You have asked for the names of
1709 lawyers, and I want to show that one Romano actually sued—278 N. Y. Supp 986—and he recovered for similar services.

Mr. Scileppi: That has nothing to do with this case.

Mr. Serri: And was allowed to recover by the Judge.

The Court: Now, gentlemen, pay no attention to what Mr. Serri has said.

Mr. Scileppi: That is not true. That case was reversed.

Mr. Serri: Where is the reversal?

1710 Mr. Scileppi: Well, there was a reversal."

(42) Cross examination of Miss Klein by District Attorney:

"The Court: You have given this jury to understand that you know many lawyers that work up at the Home Loan Corporation making contracts, as you have made?

Mr. Serri: Now, if your Honor pleases 1711

The Court: Please do not interrupt me, Mr. Serri. I am putting this question.

Mr. Serri: And I want to object to the question on the ground that——

The Court: You will wait until I put it before you object— That is what you have said?

The Witness: You have misunderstood me; either that, or I have expressed myself poorly.

The Court: Please express yourself 1712
rightly. I will give you all the opportunity you want.

The Witness: What I meant to say or had in mind was that every lawyer in the City has been doing work identical to mine in behalf of home owners, possibly clients that they represented at the time of the purchase of properties, who came back to them, without their——

The Court: Identical to yours, you say?

The Witness: Yes.

The Court: Now, you name these law-
yers that you know who have done work 1713
identical to yours.

The Witness: I would not dare.

The Court: Do you know them?

The Witness: Yes, I do.

The Court: And you refuse at my request to name them?

The Witness: Yes, your Honor.

The Court: That is all."

1714 (43) Cross examination of Miss Klein by District Attorney:

"Q. And do you know Angela Ricarano? A. Yes, I have seen her around here in court in the last few days.

The Court: Pardon me, but it is understood Mr. Serri has an exception to every count that is not included in the indictment, that is, these items about which you are questioning."

(44) Summation by defendant's attorney:

1715 "The Court: Mr. Serri, I must take exception to your statement of law on that. What every lawyer does is not legal, and nobody may take the presumption that it is. Every person must respect the law by himself and he cannot respect it the way somebody else respects it or let somebody else guide him. Laws are made for us all to respect, and if somebody else does not respect it, that gives no other person any privilege to show the same disrespect.

Mr. Serri: I do not argue——

1716 The Court: I suggest that you adhere to this case; and in talking over the cases, we are not concerned with what others do.

Mr. Serri: I am not talking about other cases. I am raising the question of credibility.

The Court: Do not get into any controversy with me. It is not pertinent to this issue what other lawyers did or they did not do.

Mr. Serri: Then I beg to note an exception to your Honor's ruling. 1717

The Court: What did this girl do? That is the only thing that is pertinent. Take your exception.

Mr. Serri: I want to take an exception to that remark. On the issue of credibility, it is all of vital moment."

(45) Summation by District Attorney:

"Mr. Serri: I object, if your Honor please. That is an incorrect statement of facts. The defendant testified that her services were to see the mortgagees who were threatening foreclosure because of arrears of taxes. 1718

The Court: Wait a minute, Mr. Serri. Let me make this plain, Gentlemen: You are not to interrupt any more when Mr. Scileppi is discussing the facts. Gentlemen, it is your recollection of the facts which controls at all times over Mr. Serri's, over Mr. Scileppi's and over my own. That is plain and simple. If there is any fact that either of these two lawyers discusses with you, with which you agree, you will accept it. If you do not agree with it, accept your own recollection, and that disposes of all the—— 1719

Mr. Serri: I want to except to your Honor's instructions, because it seems to me whenever at any time during a trial a misstatement is made, the only proper time to correct it is right then and there. I except."

1720 Twenty-fifth: That the conduct of the Assistant District Attorney in his opening to the jury, in his repeated efforts to introduce and to refer to matters already ruled out by the Court, the constant and unfair use of leading questions suggestive of the answer, plus incorrect and prejudicial language in his summation, deprived the defendant of a fair trial.

(1) Opening of District Attorney:

"If time permits, and if the Government may deem it necessary, we may go into
1721 other offenses which this defendant committed, in order to show that there was a general scheme or plan——

Mr. Serri: I object——

Mr. Scileppi (continuing): —a general plan——

The Court: Yes, I would leave that out of my opening address, Mr. Scileppi."

(2) Direct examination of Mr. Hatchpoulos by District Attorney:

"Q. May I refresh your recollection: Did you at any time while Miss Kay was
1722 talking to you—did she tell you or say anything to you about buying insurance from her.

Mr. Serri: I object to that as leading.
The Court: I am going to allow it.
Mr. Serri: Exception."

(3) Direct examination of Mrs. Sciortine by District Attorney:

"Q. Was anything said about a month?

The Court: Was anything said about the time? 1723

A. In about a month's time I will get the loan.

The Court: But who said that?

The Witness: Miss J. Kay."

(4) Direct examination of Mrs. Sciortine by District Attorney:

"Q. Did you give the defendant any money for putting this loan through for you? A. No, but she told me that she would reduce the amount of the second mortgage and whatever the reduction would be, we would go half and half." 1724

(5) Direct examination of Mrs. Abrimonte by District Attorney:

"Q. She was to get you the Home Loan? A. Yes."

(6) Direct examination of Mrs. Terrone by District Attorney:

"Q. Did this defendant, Miss Kay, did she ever come to you and speak to you about getting a Home Loan? A. Yes." 1725

(7) Direct examination of Mr. Sulfaro by District Attorney:

"Q. Just began to talk to you about the Home Loan? A. She asked me if I wanted to make application. I says, I have already made application. And she asked me if I was the owner.

Q. Then was anything said further about

1726 helping to get this loan? A. She says she could help me."

(8) Direct examination of Mr. Sulfaro by District Attorney:

"Q. When you went there, who did you look for? A. I don't remember the name. I had a postal card in my hand.

Q. Did you look for anybody in particular when you went there? Did you look around to see if you recognized anybody? A. I looked to see if I could find Miss Kay.

1727 Q. Did you find her there? A. No

Q. Did you expect to find her there?

Mr. Serri: I object, your Honor; that is clearly prejudicial on these questions.

The Court: Objection sustained."

(9) Direct examination of Mr. Sulfaro by District Attorney:

"Q. Now, then, you told us a moment ago that Miss Kay said she was going to help you with the Home Loan. A. Yes, but she ruined me.

Mr. Serri: I object to that.

1728 The Court: Strike it out."

(10) Direct examination of Mrs. Benemerito by District Attorney:

"The Court: What was she to do for the $50. that you gave her?

The Witness: She was to adjust the second mortgage and she was to adjust the first mortgage.

Q. Is that all? A. Yes. 1729

Q. Wasn't she to fix up the application?

Mr. Serri: I object to putting that in her mouth that way.

The Court: We will see——

Mr. Serri: That is greatly prejudicial. She hasn't testified that way at all. She has testified, no, that is all, and then he puts in something else.

Mr. Scileppi: Then——

Mr. Serri: No, that is highly prejudicial.

Mr. Scileppi: We have an affidavit 1730 signed by this lady.

Mr. Serri: I object to that, Judge."

(11) Direct examination of Mrs. Benemerito by District Attorney:

"By Mr. Scileppi:

Q. And you gave her a $75. check, didn't you? A. Yes.

Q. Where did you get this check from? A. From the City.

Q. For what?

Mr. Serri: I object, your Honor. Is 1731 that material?

The Court: It doesn't matter one way or the other.

Mr. Serri: It does. It is an inflammatory question, because it is a pension check. It is very prejudicial.

Mr. Scileppi: You are saying it is prejudicial.

1732 Mr. Serri: No, no. In your opening you made a great deal about that.

The Court: But you men must remember you have a jury here. I wouldn't consider it prejudicial. The fact is she got $50. Let us see how the transaction was made. I will charge the jury that they should not be prejudiced. We are trying to get the facts in the regular order. You cannot get it in the middle and then stop."

(12) Direct examination of Mrs. Benemerito by District Attorney:

1733 "Q. Now, when you gave that money to Miss Kay was there anything said about how quick the application would be made for the loan?

Mr. Serri: I object to that, the form, putting in the mouth of the witness the words. A very suggestive and prejudicial thing.

The Court: Yes, you may change the form."

(13) Direct examination of Mrs. Benemerito by District Attorney:

1734 "Q. How quickly was Miss Kay to get the Home Loan for you when you gave her that check?

Mr. Serri: I object to that.

The Court: Sustained.

Q. Did Miss Kay say anything as to how long you would have to wait before you would get the Home Loan?

Mr. Serri: I object to that. 1735
The Court: I will allow it.
Mr. Serri: Exception."

(14) Direct examination of Mr. Benemerito by District Attorney:

"Q. Did Miss Kay ever say that she would fix up things with the Home Owners' Loan Corporation?

Mr. Serri: I object as highly prejudicial. At this time I am going to ask for a mistrial, if this keeps up.
The Court: You are not going to get 1736
it, so you might as well not ask for it. I have ruled the question out.
Mr. Scileppi: I withdraw it."

(15) Direct examination of Mr. Wood by District Attorney:

"Q. Was the question brought up of filing an application with the Home Owners' Loan?

Mr. Serri: I object as very leading and prejudicial.
The Court: Answer yes or not, first." 1737

(16) Direct examination of Mr. Wood by District Attorney:

"Q. Did you say anything to Miss Kay with respect to any Home Loan application?

Mr. Serri: I object to that.
The Court: No, we had a question be-

1738 fore that, Mr. Scileppi, that he is looking up his notes, to give you the answer on."

(17) Direct examination of Mr. Iovino by District Attorney:

"Q. What do you mean, 'When everything', when the Home Loan was given and everything was through? A. Yes.

Q. And she was going to help you in connection with the Home Loan application? A. To help the loan through quick."

(18) Direct examination of Mr. Iovino by
1739 District Attorney:

"Q. Did you see again Miss Kay after you made the arrangement—after she asked you for $100 to push the loan through quickly? A. I don't remember she coming."

(19) Direct examination of Mr. Iovino by District Attorney:

"Q. Did Miss Kay tell you that she was a lawyer?

Mr. Serri: I object to that. There is
1740 no charge of that. That is highly prejudicial.

Mr. Scileppi: Let us find out what this $100. was given for.

Mr. Serri: I object, your Honor."

(20) Direct examination of Mr. Iovino by District Attorney:

"Q. You had a letter and it was after

you had that letter that you would not pay the hundred dollars? 1741

Mr. Serri: I object to that.

The Court: That is leading.

Mr. Serri: I object to the substance of it, absolutely immaterial. The question of why they didn't pay eventually is not in issue here. They are not suing for money."

(21) Direct examination of Mrs. Redner by District Attorney:

"Q. When you met her was there some discussion with respect to the condition of your home and the obtaining of a Home Loan? A. Yes. 1742

Q. What did you say to her and what did she say to you? A. She said to me that——

Mr. Serri: I object to that, your Honor, leading.

The Court: I will allow it.

Mr. Serri: Exception. He immediately puts in the sing-song about the Home Loan, about the Home Loan, about the Home Loan.

1743

Mr. Scileppi: Now, wait,——

Mr. Serri: Runs like a sing-song all through all of the questions.

Mr. Scileppi: It is a Home Loan case.

Mr. Serri: Now, if your Honor please, what conversation did you have with Miss Kay on such-and-such a date? Let us have it that way. That is the way to go about it, not to implant, did you say something about the Home Loan?

1744 Mr. Scileppi: Just cool off, Mr. Serri.

Mr. Serri: No, it is highly prejudicial. That is why I am not cool."

(22) Direct examination of Mrs. Redner by District Attorney:

"Q. Now, then, I am now talking about an application for a Home Loan; did you have any conversation with the defendant, Gertrude Kay?

Mr. Serri: I object to that, your Honor, for exactly the same reason. A little more
1745 adroitly done, but exactly the same thing.

The Court: All right; that is sustained. Ask her what conversation she had about that paper."

(23) Re-direct examination of Mrs. Wilson by District Attorney:

"Q. She never seemed to know what belonged to her, did she?

Mr. Serri: I object to it.

Mr. Scileppi: All right; that is all."

(24) Direct examination of Mrs. Beyer by
1746 District Attorney:

"Q. You remember distinctly, though, at the time she was negotiating with you with respect to what services she was rendering, that she was going to get $250. in addition to the 50 per cent. that she could save? A. Yes.

Mr. Serri: I object as leading and absolutely prejudicial, putting in the mouth

of the witness something to the contrary of what she has testified. She says she wrote out the paper. It included everything. That is prejudicial. 1747

Mr. Scileppi: I will withdraw that."

(25) Direct examination of Mrs. Beyer by District Attorney:

"Q. Will you please tell us, Mrs. Beyer, what was said with respect to the $250. fee?

Mr. Serri: I object to that. That is the question which again is putting in her mouth a matter—— 1748

The Court: I will overrule your objection.

Mr. Serri: Exception."

(26) Direct examination of Mrs. Beyer by District Attorney:

"Q. And in addition were you to pay her 50 per cent of whatever she could save you?

Mr. Serri: I object to that. Again the same——

The Court: That is leading. That is ruled out." 1749

(27) Direct examination of Mr. Rudd re: Beyer Loan, by District Attorney:

"Q. The only reason that the loan did not close was because Miss Kay would not take a reduction, is that correct?

Mr. Serri: I object to that, please.

1750 Mr. Scileppi: I withdraw that question.
The Court: Strike it out.

Q. Had Miss Kay taken the reduction which you suggested to her, would the Home Loan have closed?

Mr. Serri: I object to that.
The Court: Sustained.

Q. How much of a reduction did you ask Miss Kay to take on her mortgage?

Mr. Serri: I object to that. There is no issue as to whether we should have re-
1751 duced or not reduced.
The Court: There is an issue I am going to ask about, Mr. Serri, but that is not the issue. I will sustain that."

(28) Direct examination of Mr. Rudd, re: Beyer Loan, by District Attorney:

"Q. On the first occasion do you say that the first mortgagee had agreed to take a reduction? A. Yes.
Q. And the second mortgagee had agreed to take a reduction? A. Yes.
1752 Q. But Miss Kay refused to take a reduction? A. Yes.

Mr. Serri: I object to that.
The Court: Strike it out. Wait a minute, I am going to sustain that."

(29) Cross examination of Miss Klein by District Attorney:

"Q. You knew the kind of check you were taking from her when you charged her $50. for the Home Loan Application?

Mr. Serri: I object to that. 1753

The Court: Yes, I will sustain the objection."

(30) Cross examination of Miss Klein by District Attorney:

"Q. And after Mr. Wood came down to you and took that money away from you, did you remonstrate——

Mr. Serri: I object to that; I object to that.

A. He had no trouble getting it. 1754

Mr. Serri: I object to that as immaterial. That is incorrect, taking money away.

The Court: No, she paid it."

(31) Cross examination of Miss Klein by District Attorney:

"Q. And that was money the City had given to her to support her children with?

Mr. Serri: I object. He has been harping on this time after time and time after time; that is absolutely unfair and I object. 1755

Q. Is this the check——

The Court: Gentlemen, the fact that it is a City check is a fact. but do not attach any more importance to it than if it was cash brought out of her pocket."

(32) Cross examination of Miss Klein by District Attorney:

"Q. At the time you deposited it, did you know where the check had come from?

1756 Mr. Serri: I object, your Honor."

(33) Cross examination of Miss Klein by District Attorney:

"Q. Did you hear Mrs. Bertha Redner say that you had not saved her anything? A. You heard what Mr. Moffatt said.

Mr. Serri: Please, Miss Kay. That is not correct. Mrs. Redner admitted reductions were made on the first mortgage.

The Witness: And on the second mortgage.

1757 Mr. Scileppi: She did not admit anything of the kind."

(34) Cross examination of Miss Klein by District Attorney (the case cited 278 N. Y. S. 986 has never been reversed):

"Mr. Serri: I am not discussing the charge. You have asked for the names of lawyers, and I want to show that one Romano actually sued—278 N. Y. Supp. 986—and he recovered for similar services.

Mr. Scileppi: That has nothing to do with this case.

1758 Mr. Serri: And was allowed to recover by the Judge.

The Court: Now, Gentlemen, pay no attention to what Mr. Serri has said.

Mr. Scileppi: That is not true. That case was reversed.

Mr. Serri: Where is the reversal?

Mr. Scileppi: Well, there was a reversal."

(35) Summation of District Attorney: 1759

"Mr. Serri: I want to object to that. We have conceded nothing of the kind. Your indictment says we did certain things wilfully, feloniously, and so forth. We have conceded certain facts, but no violation of the laws charged by the indictment.

The Court: Well——

Mr. Serri: That is very important.

Mr. Scileppi: That is correct——

The Court: Mr. Scileppi——

Mr. Scileppi: That is correct. That is what I have—— 1760

The Court (continuing): —is stating the facts as proved and as admitted by her, as a concession. You may not agree with that. You will accept only what you believe is credible, draw your own inferences from the facts and wait until you get the law from me and apply the law to the facts as you find them. That is merely argument. If you agree with it, all right; if you don't, you don't. That is all.

Mr. Scileppi: That is just what I have said."

1761

(36) Summation of District Attorney:

"Mr. Serri: I object, if your Honor please. That is an incorrect statement of facts. The defendant testified that her services were to see the mortgagees who were threatening foreclosure because of arrears of taxes.

The Court: Wait a minute, Mr. Serri:

1762 Let us make this plain, Gentlemen: You are not to interrupt anymore when Mr. Scileppi is discussing the facts. Gentlemen, it is your recollection of the facts which controls at all times over Mr. Serri's, over Mr. Scileppi's and over my own. That is plain and simple. If there is any fact that either of these two lawyers discusses with you, with which you agree, you will accept it. If you do not agree with it, accept your own recollection, and that disposes of all the——

1763 Mr. Serri: I want to except to your Honor's instructions, because it seems to me whenever at any time during a trial a misstatement is made, the only proper time to correct it is right then and there. I except."

(37) Summation of District Attorney:

"capital has been made of the fact that the investigators hounded this defendant, Miss Kay, or the Kay Operating Company, or Gertrude Klein, or whatever alias she may have been known under, and such has been said with respect to this City check—that

1764 check that was given by the Child Welfare Board to Mrs. Benemerito."

(38) Summation of District Attorney:

"or whether she is the vulture we have found her to be, preying upon these poor people who had fallen by the wayside, who could not keep body and soul together."

(39) Summation of District Attorney: 1765

"In the Benemerito case she helped fill out the application."

(40) Summation of District Attorney:

"and they were made with the sole and ultimate purpose of deceiving the Home Owners' Loan Corporation."

(41) Summation of District Attorney:

"You may take that check into your jury room and wonder why this defendant was leaving ten dollar checks around. We have 1766
the evidence that it was left with Mr. Losee. You may wonder, I am wondering, whether or not it had not been done before, or with whom, but I think, Gentlemen, it is rather significant that we find this defendant leaving checks around in a situation where she has no interest, as she said time and time again, in the closing of the Home Loan, no interest in the ultimate closing of the loan."

(42) Summation of District Attorney, re: Redner contract:

1767

"and in the ultimate analysis there was no actual saving or actual reduction."

(43) Summation of District Attorney:

"in which she would profit and fatten upon these poor home owners in distress, these people whose roofs were wobbling over their heads."

1768 (44) Summation of District Attorney:

"that the Home Owners' Loan Corporation was not created so that the home owners might be mulcted and victimized by defendants of this type."

(45) Summation of District Attorney:

"Mr. Scileppi: May I call your Honor's attention to the fact, this morning counsel himself referred to the defendant as a vulture.

Mr. Serri: I object to that. I did
1769 nothing of the kind. I said you were trying to paint such a picture."

Twenty-sixth: The Court erred in refusing to dismiss the 11th and 12th counts, although the undisputed evidence showed that when the contract was made and the services rendered the owner was not an applicant for a loan, and that the defendant had paid back the $50. and withdrawn from the entire transaction long before the owner finally filed her application.

Twenty-seventh: The Court erred in refusing
1770 to dismiss the 1st, 2nd and 3rd counts, although the evidence conclusively established that the property was not occupied by the owner as her home, and this error was not cured by the fact that the Jury found the defendant not guilty on these three counts, because these three counts together with the other eleven counts on which they found her not guilty, became a factor in producing a compromise verdict to the prejudice of this defendant.

Amended Assignment of Errors.

Twenty-eighth: The Court erred, after admitting the check sent by the defendant to Mr. Losee by excluding the letter which he wrote in returning the check to the defendant. 1771

Twenty-ninth: There is no substantial evidence to support the verdict and judgment of conviction.

WHEREFORE, the said defendant by her attorney, F. R. Serri, prays that by reason of the aforesaid errors and other errors in the record proceedings, the judgment rendered on the 29th day of May, 1936, may be reversed and for naught held and 1772 that the indictment be dismissed and the defendant discharged and that the defendant have such other and further relief as may be proper in the premises.

F. R. SERRI,
Attorney for Defendant,
Office & P. O. Address,
66 Court Street,
Borough of Brooklyn,
City of New York.

1773

Stipulation and Order Extending Time to File Record.

1774

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,

Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,

Defendant-Appellant.

1775

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by and between the attorneys for the respective parties hereto that the time for the defendant-appellant to file her record on appeal in the above entitled matter be and the same hereby is extended to October 19 1936.

Dated, Brooklyn, October 16, 1936.

FRANK R. SERRI,
Attorney for Defendant-Appellant.

1776

LEO J. HICKEY,
United States Attorney.

So ordered:

October 16, 1936

Matthew T. Abruzzo

United States District Court

Stipulation as to Record.

UNITED STATES DISTRICT COURT, 1777

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the 1778
said District Court in the above-entitled matter as agreed upon by the parties.

Dated, New York, October 17th, 1936.

FRANK R. SERRI,
Attorney for Defendant-Appellant.

LEO J. HICKEY,
United States Attorney.

Order Filing Record. 1779

On the consent of the attorneys for the respective parties the foregoing printed record is hereby ordered filed in lieu of the original papers for the purpose of certifying a record on appeal.

Dated, Brooklyn, N. Y., October , 1936.

MATTHEW T. ABRUZZO,
U. S. D. J.

Clerk's Certificate.

1780

UNITED STATES DISTRICT COURT,

EASTERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,
Appellee,

—against—

GERTRUDE KAY, alias GERTRUDE KLEIN,
Defendant-Appellant.

1781

United States of America,
Eastern District of New York—ss.:

I, PERCY G. B. GILKES, Clerk of the District Court of the United States of America for the Eastern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter, as agreed on by the parties and ordered filed by the Court.

1782 IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District, this 20 day of October in the year of our Lord one thousand nine hundred and thirty-six and of the Independence of the said United States the one hundred and sixty-first.

PERCY G. B. GILKES,
Clerk.

(Seal)

J. N. Leavens
Deputy Clerk.

[fol. 595] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA, Appellee,

against

GERTRUDE KAY, alias GERTRUDE KLEIN, Defendant-Appellant

Before Manton, L. Hand and Swan, Circuit Judges

Appeal from the District Court for the Eastern District of New York

Defendant was convicted of violations of § 1467(a) and (e) of the Home Owners Loan Act of 1933 (48 Stat. 128, as amended, 48 Stat. 1264; 11 U. S. C. A. 1461). Defendant appeals. Judgment affirmed.

F. R. Serri, Attorney for Appellant.

Leo J. Hickey, United States Attorney; Vine H. Smith, Asst. U. S. Attorney, of Counsel.

MANTON, Circuit Judge:

The appellant was charged in an indictment with violations of § 1467(a) and (e) of the Home Owners' Loan Act (48 Stat. 128, as amended, 48 Stat. 1264). There were twenty-five counts, three of which were withdrawn during the trial. Appellant was convicted on two counts, 5 and 15, based on § 1467(a), which charged that the appellant "for the purpose of influencing the action of the Home Owners' Loan Corporation • • • unlawfully, knowingly, wilfully and feloniously" made a false statement in writing [fol. 596] to the corporation consisting of overstatements of the amounts due on mortgages upon the properties of persons applying for loans. Of the 20 counts based upon § 1467(e) appellant was convicted upon six; four of these counts, 8, 14, 20 and 24, charged her with contracting to receive fees other than those "authorized and required by the corporation" and counts 12 and 25, the unlawful receiving of such fees. The sentence imposed which was suspended on one of the eight counts, was imprisonment of a year and a day, the terms on all counts to run concurrently.

Notice of appeal and assignment of errors were filed June 1, 1936 and an order extending the time to file a bill of exceptions was granted June 30, 1936. Though this order is

not included in the record, it is clear from later orders which purported to further prolong the period of extension that the bill of exceptions was not filed within the time specified by the order of June 30, and the appellant does not contend otherwise. The bill of exceptions was not settled and filed until October, 1936. The power to grant an extension resided with the trial judge, subject only to specific exceptions (U. S. v. Adamowicz, 82 Fed. 2, 288 [C. C. A. 2], cert. den. 80 L. Ed. 747), and this power could only be exercised within a period of thirty days after taking the appeal (U. S. v. Ray, 86 Fed. 2, 942 [C. C. A. 2], cert. granted Feb. 8, 1937). This is the requirement of Rule IX. of the Supreme Court Rules in criminal cases. Although the appellant obtained one valid extension within the permissible period, the bill of exceptions was not settled and filed in due time and we are therefore foreclosed from considering the errors that [fol. 597] are assigned respecting the bill of exceptions. This is true notwithstanding any contrary stipulations of the parties or the ineffectual orders of the trial judge made subsequent to June 30 granting extensions. Therefore, in accordance with Rule VIII., our consideration on this appeal is limited to the sufficiency of the indictment and the judgment of the court below. U. S. v. Adamowicz, supra.

In contesting the validity of the indictment, appellant raises the question of the constitutionality of the Home Owners Loan Act of 1933 and we must therefore inquire into the powers relied upon for its enactment and the extent to which those powers have been exercised. The act was intended to supplement the Federal Home Loan Bank Act (47 Stat. 725) by supplying direct relief to home owners. For this purpose, the Home Owners Loan Corporation was organized with a capital stock which was not to exceed $200,000,000 and which was wholly subscribed for by the Secretary of the Treasury on behalf of the United States. To further finance its activities, the corporation was authorized to issue bonds originally in the amount of two billion but later increased to four billions, seven hundred and fifty millions, the bonds to bear interest at 4% and to be guaranteed both as to interest and principal by the United [fol. 598] States.* For a period of three years after June

* Bonds issued prior to April 27, 1934 or issued thereafter pursuant to committments outstanding on that date, were guaranteed only as to interest.

30, 1933, the corporation was authorized to exchange its bonds, in a limited amount, for mortgages and to pay, within limits, any accrued taxes, assessments, necessary maintenance and repairs, and incidental costs in cash. The maximum interest payable by the home owner is 5%. If the mortgagee refuses to accept the bonds and the home owner is unable to obtain a loan through orginary channels, the corporation is authorized to make limited cash advances at interest not to exceed 6%. The corporation carries the indebtedness as a first lien for 15 years, amortized monthly, quarterly, semi-annually or annually as necessity requires. Also, bonds may be exchanged and cash advanced to redeem foreclosed property. The act only deals with homes valued at not over $20,000 and no single loan, whether in bonds or cash, may exceed $14,000.

In creating this governmental agency and investing it with the described functions, Congress relied on its power to tax, borrow and appropriate public money. The power "to lay and collect Taxes * * * and provide for the general welfare of the United States * * * "is explicitly conferred (Clause 1, § 8, U. S. Constitution) and necessarily contains the implied power of appropriation. See, Field v. Clark, 143 U. S. 649,695. The power "to borrow money on the credit of the United States" is granted without express limitation (Clause 2, § 8; See, Legal Tender Cases, 110 U. S. 421, 444). In taxing and making appropriations for the general welfare, Congress is not confined within the scope of the delegated powers but must merely act in furtherance of general or national as distinguished from local purposes. [fol. 599] U. S. v. Butler, 297 U. S. 1, 65. And the power to borrow can be subject to no other or greater limitation.

The character of the legislation enacted by Congress over a span of years indicates what has been accepted to be the expenditure of public funds for a public purpose. Appropriations have been made for vocational rehabilitation (48 Stat. 389), for state reforestration and the promotion of timber crops (43 Stat. 653), for the education of the blind (20 Stat. 468), for the support of rural schools (39 Stat. 929), for the promotion of agricultural extension work (38 Stat. 372), for the creation of a bureau of home economics (46 Stat. 1271), for cod subsidies (1 Stat. 229), and bounties for sugar producers [(26 Stat. 583); See, U. S. v. Realty Co., 163 U. S. 427], for the promotion of the welfare and hygiene

of maternity and infancy (42 Stat. 224). The ability to challenge this power thus exercised has, it is true, been severely circumscribed [Frothingham v. Mellon, Mass. v. Mellon, 262 U. S. 447] but its extensiveness is none the less clear on that account.

The national public purpose embodied in the Home Owners' Loan Act of 1933, is evident even if it is our function to pass upon Congress' determination in that respect. As stated, the act was intended to afford direct relief to home owners and in this way to supplement the home loan bank system which would continue as a reserve system for home-financing private institutions. [Sen. Rep. No. 91, 73rd Cong. 1st Sess.] The purpose of the act was not to induce the unloading of mortgages on the United States by [fol. 600] way of obtaining a better rate of interest, for the act provides in various ways against this, but to relieve the distress of foreclosure. The estimated total of home mortgages in 1933 was $21,000,000,000 [73d Cong., 1st Sess. p. 4975] and the report of the House Ways and Means Committee on the earlier Federal Farm Loan Bank Act (H. R. No. 1418, 72d Cong. 1st Sess.) contains facts which establish the national character of this legislation beyond question. For such a purpose, therefore, Congress created an agency wholly owned by the government in whose behalf the power to borrow and spend was to be exercised.

There are no obstacles here such as may inhere in situations where in conjunction with the spending power Congress seeks to exercise powers of eminent domain [U. S. v. Certain Lands in the City of Louisville, 78 Fed. 2, 684 (C. C. A. 2), appeal dismissed, 294 U. S. 735]; nor is there an attempt to employ the taxing and spending power to accomplish prohibited ends as there was found to be in U. S. v. Butler, supra. For a limited period of time Congress merely facilitated loans to small home owners much as it did for the owners of farm land by the Farm Loan Act (See, Smith v. Kansas City Title Co., 255 U. S. 180).

The appellant contests the validity of § 1467(a) and (e) under which the indictment was framed. Counts 5 and 15, based upon § 1467(a) and upon which she has been found guilty, charge that she knowingly and wilfully made false statements in writing to the corporation for the purpose of influencing its action. We are concerned not with any question of proof but only whether the indictment charges an

offense which Congress could and did validly create; and there is no sound reason why, in order to safeguard the lend-
[fol. 601] ing system which it had established, Congress could not punish "whoever makes any statement, knowing it to be false for the purpose of influencing in any way the action of the Home Owners Loan Corporation". The crime is sufficiently defined and was properly charged in this indictment. McClanahan v. United States, 12 Fed. 2, 263 (C. C. A. 7).

The other counts upon which the appellant was convicted and sentenced to terms to run concurrently with counts 5 and 15 charge that she had contracted to receive and actually did receive fees other than those "authorized and required by the corporation" in violation of § 1467(e). It is undoubtedly right to say that until the corporation defined the fees which could properly be charged the crime was too vague and indefinite. U. S. v. Willard, 8 Fed. Supp. 356 (D. C. Mich.). However, at the time that the appellant committed the acts charged the corporation had already issued its regulations and defined the fees and charges which could validly be solicited and received. We must assume that it was sufficiently proved that the appellant violated § 1467(e) as administered by the regulations.

Judgment affirmed.

[fol. 601½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Gertrude Kay, alias Klein. (Copy.) Opinion. Manton, Circuit Judge.

[fol. 602] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 12th day of April, one thousand nine hundred and thirty-seven.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

vs.

GERTRUDE KAY, Alias GERTRUDE KLEIN, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 603] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States vs. Gertrude Kay, alias Gertrude Klein. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 12, 1937. William Parkin, Clerk.

[fol. 604] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 603, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States, Plaintiff-Appellee, against Gertrude Kay alias Gertrude Klein, Defendant-Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this twenty-second day of April, in the year of our Lord one thousand nine hundred and thirty-seven, and of the Independence of the said United States the one hundred and sixty-first.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 605] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Cardozo took no part in the consideration or decision of this application.

FILE COPY

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

W. S. CULBERTSON,
FRANK R. SERRI,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 991

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Opinion Below.

The opinion of the Circuit Court of Appeals, by Manton, Circuit Judge, is not yet reported but appears in the record at page 595.

Jurisdiction.

The order of the Circuit Court of Appeals affirming the judgment of the District Court was entered April 12, 1937.

The petitioner invokes the jurisdiction of this Court under Section 240(a) of the Judicial Code and Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

Questions Presented.

1. Whether the Home Owners' Loan Act of 1933, as amended in April, 1934, in so far as it creates the Home Owners Loan Corporation is constitutional.

2. Whether Section 1467 (e) of the Home Owners' Loan Act, as amended in April, 1934, relating to charges, is constitutional.

3. Whether Section 1467 (a) of the Home Owners' Loan Act, relating to false statements, is constitutional.

4. Whether Section 1467 (a), as to making any false statements, applies to an overstatement as to the balance due on a second mortgage or whether such overstatement is solely covered by the phrase in this section of "or whoever willfully overvalues any security."

5. Whether a trial judge has the power under Rule IX of the Criminal Appeals Rules to extend the time for settling and filing a bill of exceptions by an order not entered within thirty days after the taking of the appeal.

6. Whether the Circuit Court of Appeals has the power under Rules IV and IX of the Criminal Appeals Rules to consider a bill of exceptions so filed, particularly where important constitutional questions are properly before the court and can be adequately considered only in the setting of the particular record.

7. Whether a defendant who has moved swiftly to comply with the rules, is without fault and relied on the stipulation of the United States District Attorney and the order of the trial judge—thus losing the opportunity to settle the bill on the stenographer's minutes—is not deprived of her liberty without due process of law if her bill of exceptions is not considered.

Statement.

The indictment against this defendant, a mortgage and real estate broker, consisted of 25 counts, covering in all ten separate transactions with ten different owners.

A. *Section 1467 (e) of the Home Owners' Loan Act, as Amended April 1934.*

There were 20 counts which charged violations of Section 1467 (e) of the Home Owners' Loan Act, as amended in April, 1934 (the phrase "in connection with a loan" is omitted by the amendment), relating to soliciting, contracting and receiving fees from applicants for loans contrary to its provisions. The counts do not set forth what the services were for which the defendant solicited, contracted and charged. They contain the general allegation that the services were in connection with a loan from the Home Owners Loan Corporation and quote the words of the statute that the charge "was not for an ordinary charge or fee authorized and required by the said Home Owners Loan Corporation for services actually rendered for examination and perfection of title, appraisal and like necessary services" (R. 7).

In most instances, these contracts were in writing. They were also contingent contracts, payable only if the defendant performed by obtaining the necessary reductions in certain mortgages, the waiver of interest payments, other modifications in the terms of the mortgages or the stay of threatened or pending foreclosures.

While there was some dispute as to the precise credit to be given to the defendant for her services—the owners who had broken their contracts naturally minimized it and one or two of the closing attorneys claimed part of the benefit—there was no dispute that the outside work which the de-

fendant agreed to do was there to be done, that it required a considerable expenditure of her time and effort, and that after her intervention, reductions followed in several cases. For all her work in these ten transactions the defendant retained $140 (R. 346).

The substantial, separate and distinct character of these contracts and these services is not altered because the defendant wrote a few letters for the owners in their own names to the Home Owners Loan Corporation, nor because the Assistant District Attorney, with a barrage of leading and unfair questions, attempted to inject into the case the idea that the defendant was "to help put through the home loan" or "to get it through quickly."

The contracts made and the services rendered by the defendant were the adjustment of payments, modification of terms of mortgages, stay of foreclosures, removal of receivers, and reduction of the principal due on mortgages. The owners called in the defendant when foreclosure threats were made or foreclosure papers actually served or a receiver appointed or a notice sent to the owners by the Home Owners Loan Corporation that their loan was approved but that the encumbrances exceeded the loan and that consequently it would be necessary for the owner to get the required reductions. In each case, some such practical difficulties or problems confronted the owner. These obstacles were not invented by the defendant. They were real and had to be removed. This genuine need produced contracts with the defendant.

The defendant was found guilty under six counts of contracting and receiving fees from applicants. She was found "not guilty" on fourteen counts of soliciting, contracting and receiving. The "guilty" transactions involving contracting and receiving cannot be distinguished from the "not guilty" transactions and in all these cases, the essential facts were admitted by the defendant.

For example, compare the summary of the undisputed facts in two transactions:

Counts Nos. 24 & 25. The Home Owners Loan Corporation notifies the owner that the loan is granted but that the mortgages exceed the loan. Problem: how to get the 1st mortgage of $9,000 and the 2nd of $1,000 reduced? The defendant broker is engaged. She negotiates with the various mortgagees. Substantial reductions are obtained, although a dispute arises as to whether the defendant is to be credited with a reduction of $600 or $900. Defendant is paid $100. Verdict: *Guilty* (R. 87, 92, 95).

Counts Nos. 21 & 22. In this case, the 1st mortgage of $7,000 and the 2nd of $1,300 exceeded the loan which was tentatively approved by the Home Owners Loan Corporation. The same problem of reduction. Contract made by the owner with the defendant to reduce these mortgages. The defendant negotiates with the mortgagees. About $500 is admittedly reduced, although the usual dispute ensues as to just how much is to be credited to the efforts of the defendant. The defendant also wrote a two page letter for the owner, in the owner's name, to the Home Owners Loan Corporation. Defendant is paid $40 (R. 192, 198). Verdict: *Not Guilty.*

B. *Two Counts under Section 1467 (a) as to False Statements.*

Besides the six counts under Section 1467 (e) as to contracts and receipt of fees, the defendant was convicted on Counts Nos. 5 and 15, which charged her with knowingly making two false statements in two second mortgagee's consents as to the balance due on these two mortgages for "the purpose of influencing the action of the Home Owners Loan Corporation," contrary to Section 1467 (a) of the Home

Owners Loan Act. There is no allegation in either count that any loan to the respective owner was approved or actually made or that any payment was made to the defendant or to anybody else or that the two applications ever reached the stage of being sent to a closing attorney. Only the filing is alleged (R. 13, 31).

The second mortgagee's consent to take bonds is prepared by the Home Owners Loan Corporation, is mailed to the mortgagee by the corporation and is later filed by the mortgagee with the Home Owners Loan Corporation. As the copy set out in the indictment indicates, it is in form an offer by the mortgagee which states the amount for which the mortgage is a lien, including the unpaid balance of principal and interest, and the amount in bonds, plus a nominal cash sum, which the mortgagee will accept for a satisfaction of the mortgage. The consent is temporary, for a thirty day period, and may be withdrawn on ten days notice to the state manager of the corporation (R. 14, 32).

The mortgagee's consent to take bonds is not under oath nor acknowledged nor verified in any form nor is there any warranty as to the accuracy of the information (R. 14, 32).

The first form of mortgagee's consent as prepared by the Home Owners Loan Corporation in Count 5, called for more detailed information as to the mortgage than the revised form in Count No. 15. The detailed information was not given (R. 15). Under Count 5, the consent ends with the statement that a certain amount was due to the mortgagee (R. 15). There is no such specific statement under Count 15 (R. 33).

The opening paragraph of both consents is the same:

> "The undersigned is a holder of a second mortgage or other obligation, which constitutes a lien or claim on the title to the home property of * * * in the sum of $—, including unpaid balance of principal and interest, to date" (R. 14, 32).

C. *All Three Fraud Counts Nos. 6, 16 and 10 Dismissed on the Government's Own Motion During the Trial.*

Ordinarily, these three counts could be ignored. But in this case they are significant because they were the only three counts charging fraud—one, that of pretending to be an employee of the Home Owners' Loan Corporation and two counts which charged that the two false statements in the two mortgagee's consents were made with the intent to defraud the Home Owners' Loan Corporation and the two home owners. All these three counts were dismissed on the Government's own motion (R. 286).

When it is thus established that the two false statements were not made to defraud the home owners, and that they were not made to defraud the Home Owners' Loan Corporation, what "crime" is there left?

D. *The Bill of Exceptions.*

Petitioner repeats what was set forth in her reply brief and not disputed before the Circuit Court of Appeals. Convicted on May 29, 1936, she moved swiftly to comply with the rules governing criminal appeals. Notice of appeal was filed promptly on June 1, 1936; during that same week written notice and request was made upon the court stenographers to furnish a copy of the minutes of the trial. On June 13th, the court stenographers replied in writing demanding payment in advance of $400. On June 15th a check for the full amount was sent by the petitioner. About the end of June the stenographers stated that because of the rush of prior official business it would be impossible for them to deliver a transcript. The District Attorney and the trial judge were informed of these facts and an order was signed on June 30th extending the defendant's time to August 18th. Then there followed inquiries every week of the stenographers and the same answer: that prior official

business would delay delivery. The last letter was written on July 28th urging that the copy be furnished at the earliest opportunity. Several days afterwards, the copy was brought to the defendant and there remained a little over two weeks in which to prepare and print and settle the bill. Every effort was made by the defendant's attorney to expedite the work, but again the appellant's efforts were unavailing. The printer was unable to furnish the work on time. When he so informed the appellant, the situation was explained to the District Attorney on or about August 17th and he signed the stipulation extending the appellant's time and the trial judge signed the order on August 18th.

The Appellant relied on the stipulation of the District Attorney and the order of the trial judge. If they had not signed, the bill could have been settled on the stenographer's minutes either on August 17th or the 18th.

The Circuit Court held that it lacked the power to consider the bill of exceptions, and its decision rests solely on the want of power.

Summary of Argument.

1. The Home Owners' Loan Act of 1933, in so far as it creates the Home Owners Loan Corporation, is invalid:

(a) Congress cannot incorporate a private bank. The Home Owners Loan Corporation is exclusively a Corporation with limited private banking powers.

(b) The Act does not declare the Corporation to be a fiscal agent of the United States nor a depositary of public moneys nor require it to invest any funds in U. S. Bonds.

(c) The Act cannot be sustained under the "taxing for general welfare clause" because in substance the Corporation is a corporate substitute for the taxing and appropriating power, a device to evade using this power and not an exercise of it.

(d) And if it be considered an exercise of the taxing power, it is not for the general welfare because it did not affect any vital national interest or activity, merely reducing for a limited number of owners the nominal rate of interest by 1% (increasing the actual rate paid in the long run), staying some foreclosures and shifting the right to foreclose from many mortgagees to one large corporation.

(e) And whether it be for the general welfare or not, it invades a field of local activity reserved to the people and the states under the 9th and 10th Amendments.

2. Section 1467 "e" of the Home Owners' Loan Act, as amended in April, 1934, is invalid because it violates both the 5th and 6th Amendments:

(a) The Circuit Court of Appeals admits that "until the Corporation defined the fees which could properly be charged the crime was too vague and indefinite".

(b) Although there is not one word about the regulations in the indictment, the Circuit Court at the end of its opinion stated that the regulations had been issued and that the regulations so assumed cured the admitted vagueness of this section—apparently using the forbidden bill of exceptions to affirm the judgment, but not to reverse it.

(c) The regulations—which are found in the bill of exceptions only—do not adequately clarify the statute except as to services of appraisal, examination and closing title rendered by persons employed by the Corporation (R. 425); they leave untouched the zone covered by "and like necessary services", and the whole field of other services rendered by persons not employed by the Corporation.

(d) This section is invalid because if applied to persons not employed by the corporation, it constitutes a denial of their liberty and property without due process of law.

(e) Unlawful delegation of power. Not only is the Corporation to fix "ordinary charges" for specified services, but also for "like necessary services", and upon its definition of these indefinite clauses, the list of crimes is expanded or contracted.

3. Section 1467 "a" of the Home Owners' Loan Act is invalid because it is too vague and uncertain, makes acts criminal without any intent to defraud or any improper motive or any possible detriment to anybody and may be stretched so far as to infringe the right of free speech.

4. Bill of Exceptions should be considered by an Appellate Court when the defendant is without fault, has acted diligently, relied in good faith on the stipulation of the District Attorney and the order of the trial judge, and whose time to file has been in the main consumed by the acts of third parties over whom she had no control.

5. The appeal from the judgment and conviction is upon substantial and meritorious grounds.

ARGUMENT.

Point I.

The Home Owners' Loan Corporation is not authorized by the fiscal powers of Congress because the act creating it does not make it a depositary of public moneys, nor a fiscal agent of the United States nor require it to invest any funds in United States Governments bonds.

The Home Owners' Loan Act makes the Home Loan Banks fiscal agents of United States and depositaries of public money (Title 12, U. S. C., Sec. 1434). Likewise, it also grants this power to the Federal Savings and Loan Associations (Sec. 1464 (k)), and similarly, in other laws, a formidable list of other agencies from National Banks,

Title 12, U. S. C., Sec. 90 to Federal Credit Unions, Sec. 1767 have had conferred upon them this specific authority. Because of this express authority to act as financial agent of the Government, the R. F. C. was upheld in *Langer* v. *United States*, 76 F. (2d) 817. And for the same reason, the Federal Farm Land Bank Act was sustained in the case of *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, p. 211:

> "We, therefore, conclude that the creation of these banks, and the grant of authority to them to act for the government as depositaries of public moneys and purchasers of government bonds (5% required to be so invested), brings them within the creative power of Congress, although they may be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest."

Where the Corporation or bank has conferred upon it public functions, there may be added private functions as an incident to its public work or to enable it to perform its governmental activity more effectively. Upon the solid foundation of public function, there may arise a varied structure—a National Bank may act as trustee, executor, etc. (*First National Bank* v. *Union Trust Co.*, 244 U. S. 416), or such a bank may be incorporated "as a machine for the fiscal operations of the government" and exercise simultaneously the ordinary powers of a private bank. (*McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *United States Bank*, 9 Wheat. 738, 872.)

But the Home Owners' Loan Act, while it makes the Home Loan Banks and the Federal Savings and Loan Association fiscal agents of the United States and depositaries of public moneys, *no where confers such powers on the Home Owners Loan Corporation.* In fact, not only did Congress fail to declare the H. O. L. C. a fiscal agent of the Govern-

ment, it actually authorized the Federal Reserve Banks to act as fiscal agents for the corporation. Title 12, U. S. C., Sec. 1469-I, reads: "The Federal Reserve Banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians and fiscal agents for the H. O. L. C." In short, the H. O. L. C. was never created as an agent for the fiscal operations of the United States and it was not able nor equipped to act as such for anybody.

It stands as a corporation with limited private banking powers to make loans to private individuals on their private homes. True, it is managed by the same board as manages the Home Owners' Loan Banks, its stock is owned by the Government, it has the free use of the mails and its bonds were first guaranteed as to interest and then as to principal by the United States. But these facts do not add to its public powers and functions. It is not declared by Congress to be a depositary of public moneys; it is not declared to be a fiscal agent of the United States; and it is not required to invest in United States bonds. It lacks the public foundation upon which the private powers may be attached. It remains a corporation equipped to do solely a private banking or mortgage business. And as the Court said in *Osborn* v. *U. S. Bank,* 9 Wheat. 738, p. 860:

> "It has never been supposed that Congress could create such a Corporation."

Subsequent amendments in 1935 authorizing the H. O. L. C. to purchase bonds of the Federal Home Loan Banks, shares of the Federal Savings and Loan Associations and of the Federal Savings and Loan Corporation, even if they could change the character of the H. O. L. C., cannot be considered as the indictment deals solely with the Act of 1933, as amended in April, 1934.

Point II.

Congress may tax and appropriate for the general welfare, but it cannot create a corporate device which in effect dispenses with the taxing power and is a substitute for it.

Admittedly, as the Circuit Court claims in its opinion, Congress is granted the power to tax to promote the general welfare of the United States. It may appropriate and spend for a variety of public purposes, beyond the precise ambit of the delegated powers, *United States* v. *Butler*, 297 U. S. 1.

Is the H. O. L. C. an exercise of that power? Or is it a corporate device to avoid using that power? Aside from the purchase of its stock of $200,000,000 by the Secretary of the Treasury on behalf of the United States, through funds made available by the R. F. C., the Corporation is completely the creature of the power to incorporate. As such, it is authorized to issue its own bonds, at first not exceeding two billions and later almost five billions, or to be exact not over $4,750,000,000. In essence, there was created a Corporation, which spread and grew far beyond the puny appropriation by the United States of a couple hundred millions, into a corporate giant with billions of bonds. This whale of a Corporation was not produced by the taxing and appropriating power. The United States after the small initial amount for the stock, did not tax nor appropriate out of the general funds of the Government. Yet it grew into a giant whale of tremendous proportions. Without taxing and without appropriations and without the spending power of the Government, the H. O. L. C. expanded from a two billion to an almost five billion dollar institution.

It may be said correctly that the H. O. L. C. is a corporate entity which dispenses with the exercise of the taxing

and appropriating power of the Government. It is clearly a substitute for it. In effect, the United States says:

> "We shall not tax nor appropriate government funds; we shall create a corporate substitute, capable of standing on its own feet and which can issue its own bonds."

May Congress incorporate such a Corporation? The power is not expressly given but it may be implied only when the Corporation is a convenient, useful and essential instrument to execute a power granted to Congress. *But the incorporating power may not be implied to avoid using the delegated power.* If that were permitted, small appropriations would be sufficient to spawn an unlimited corporate progeny, not through the exercise of the taxing and spending power, which Congress has, but by dispensing with the taxing power and substituting Corporate creatures for every purpose which might conceivably be labeled general welfare. Practically speaking, Congress could then transform an implied power of limited scope into an express power of general incorporation.

Point III.

And if the Home Owners' Loan Corporation be considered an exercise of the taxing power, it is not for the general welfare because it changes slightly certain creditor-debtor relations by reducing the nominal rate of interest by 1% (but increasing the actual rate paid in the long run), and shifting the right to foreclose from many mortgagees to one large corporation without substantially affecting any vital national interest or relationship.

In its opinion, the Circuit Court of Appeals, lists a number of appropriations made by Congress to prove "what has been accepted to be the expenditure of public funds for a public purpose." The first answer may be made in words of this court in *United States* v. *Butler*, 297 U. S. 1, page 73:

"Such expenditures have not been challenged because no remedy was open for testing their constitutionality in the Courts".

Besides, practically all of those appropriations involve either the preservation of natural resources or the health and education of the country's citizens. On such things depends the very existence of a nation, the quality of its manhood and womanhood. They touch life itself, and affect people in their most central and vital relations—as citizens and consumers and workers, whether they shall have knowledge and light, what they shall eat and produce, whether they shall work and live.

Another characteristic of these appropriations to preserve natural resources and promote the health and education of the people is that they do not involve ordinary private and commercial transactions. They do not modify existing private or personal contracts between individuals. They invade a field hardly touched by private contract or private enterprise. It might be said that they deal with a public domain or with public relations, separate and apart from the field of private activities.

How different is the H. O. L. C. It modifies slightly certain existing private contracts between certain private debtors and creditors. The debtor now substitutes for his existing contract with one or more creditors to whom he agreed to pay 6% interest, a new contract with a large corporation to which he agrees to pay 5% over a longer period of time, with certain installments of principal. The right to foreclose is not abolished nor stayed; it is shifted from many mortgagees to one large corporate mortgagee. The right to take deficiency judgments likewise is not abolished nor stayed; it is centered in the Home Owners' Loan Corporation.

Does such a minor change of private debtor-creditor relationships constitute "the general welfare"? If it does,

then the sky is the limit as to what may be done under this clause.

POINT IV.

And whether or not the Home Owners' Loan Corporation is an exercise of the taxing power for the general welfare, it is invalid because it invades the rights and powers reserved to the States and the people.

While the taxing power is "the least limitable" of powers, whose precise boundaries it would be disingenuous to attempt to fix, there is no dispute that every delegated power, however general, is hedged in by the very Constitution in which it is found. All of the delegated powers, for example, are subject to the Fifth Amendment. (*Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555, p. 589.) And with the exception of powers over money matters—where there is coupled with the grant to Congress a definite prohibition against their exercise by the states—and possibly that over foreign commerce (*Board of Trustees* v. *United States,* 289 U. S. 48, p. 57) all of the delegated powers, including the taxing power, are subject to the restraint of the 9th and 10th Amendments. Unless taxing-for-the-general-welfare is subject to these restrictions, it may be expanded to cover practically every substantial activity in the Country, Congress becomes omnipotent and the local rights and powers of the people and the states may be obliterated. Such a concentration of power is a denial of constitutional federalism; it destroys the balance and separation of powers between nation, states and people which our system established; and it tends to produce the very apoplexy at the center and paralysis at the extremities which federalism prevents. True, the cardinal principle of statutory construction is "to save and not to destroy," but equally, the cardinal principle of Constitutional construction must be to save and not to destroy the Constitution.

The Circuit Court of Appeals in its opinion says that there is no attempt to employ the taxing and spending power to accomplish prohibited ends as there was found to be in *United States* v. *Butler,* 297 U. S. 1. But is the difference visible? The lending of money to private individuals on their private houses, the rates of interest to be paid by them, the terms of their mortgages, fees of mortgage brokers, appraisals of private homes, examination of titles to such homes, the closing of loans to the same homes and the foreclosure of mortgages are indubitably private and local activities. They are just as private and local an activity as the planting of wheat or potatoes. If Congress, through the taxing power, cannot invade the local field of making contracts with farmers to reduce their acreage of wheat, it cannot enter the local field of making contracts to reduce the rate of interest payable by a homeowner, to substitute a new form of mortgage, with a long term investment instead of a short term investment, with amortization of principal, and with the customary power to foreclose in the event of default.

And by analogy, if Congress, according to *Ashton* v. *Cameron County Dist.,* 298 U. S. 513, cannot extend the bankruptcy power to provide for voluntary petitions by embarrassed districts to readjust their debts because the reserved powers of the States block the way, with equal certainty the same powers and rights reserved to the people or the states block voluntary applications by embarrassed debtors for the readjustment of the encumbrances on their homes.

Nor is the contrary held by the case of *Smith* v. *Kansas City Title Co.,* 255 U. S. 180, also cited in the opinion of the Circuit Court of Appeals. While the argument that the Farm Land Bank could be sustained under the taxing for general welfare clause was pressed vigorously, the court merely continued the line of reasoning of Chief Justice

Marshall as to the incorporation of a National Bank. If a National Bank or a Farm Land Bank were authorized to act as fiscal agent of the United States, it could also be empowered to trade with individuals. But trading or loaning money to individuals remained a private enterprise, a local activity, which Congress could not undertake by a Corporation devoted exclusively to that local and private field.

POINT V.

Sections 1467 "A" and "E" violate both the 5th and 6th Amendments, deprive people of their liberties and contract rights without due process of law, punish them for not knowing a new law, vague and uncertain, about which lawyers are in doubt and the lower courts in conflict.

Even if the main trunk should stand, these two branches of the Act should be lopped off unhesitatingly. (In *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315, another section of the Home Owners' Loan Act regulating the conversion of State associations into Federal Savings and Loan Associations was invalidated).

A. *First, let us examine Section 1467 "e".* The Circuit Court of Appeals expressly admits in its opinion that the statute by itself is too vague and indefinite: "It is undoubtedly right to say that until the Corporation defined the fees which could properly be charged the crime was too vague and indefinite."

What has cured this obvious defect? The regulations of the Corporation? "At the time that the appellant committed the acts charged," so continued the opinion of the Circuit Court of Appeals, "the Corporation had already issued its regulations and defined the fees and charges which could validly be solicited and received".

But where is the proof that any such validating regulations had been issued? The indictment does not contain a

word about any regulations; it repeats the exact words of the statute (R. 7). *The only proof of any regulations appears in the bill of exceptions, which the Circuit Court claims it is forbidden to consider.* Well, if it cannot look at it to reverse the judgment, it cannot peek at it to affirm the judgment.

However, the regulations, as set forth only in the bill of exceptions (R. 422-6), do not remove the essential vagueness and indefiniteness of the statute. They fix the fees for a few specified services such as appraisal, examination of title and the closing of loans. But these remove only the lighter fog surrounding the statute. What are "like necessary services," probably the broadest expression in this section? To whom does the section apply? Is it limited to appraisers, examiners and attorneys employed by the Home Owners' Loan Corporation? Does it include the services of mortgage brokers engaged by the owners to modify or adjust or obtain reductions of Mortgages? What about services rendered to an applicant which have only an indirect bearing on the loan? The regulations will be searched in vain for any answer (R. 422-6).

The vagueness in the statute begets the conflict in the decisions. In *Romano* v. *Magliulo*, 278 N. Y. S., 986, this section was restricted to the employees of the Home Owners' Loan Corporation, namely, the appraisers, the title examiners and the closers who were employed by the Corporation itself. (Admittedly, the defendant in our case was not employed by the Home Owners' Loan Corporation.) In *United States* v. *Willard*, 8 Fed. Supp. 356, p. 357, nothing is said as to any such restriction, but the Court held that until "ordinary charges" are regulated and defined by the Corporation "the statute is lacking in that certainty which is required to uphold criminal statute and indictments thereunder against attack for vagueness and indefiniteness". As to the construction of the statute after the regulations were promulgated, the Court did not decide.

Another variation is found in *United States* v. *Monoghan, Eastern District of Mo.*, Jan. 9, 1935, par. 17,711, Reference Library C. C. Corp. Before the amendment of April, 1934, the statute was certain enough, so the Court ruled. As to the amended statute, upon which our indictment is founded, the Court said:

> "The statute as above set out was effective from June 13, 1933 until April 27th, 1934, when it was amended. The amendment omitted the words 'in connection with a loan by the Corporation, or an exchange of bonds or cash advanced under this Act'. This apparent oversight has rendered the present statute entirely too vague to constitute the basis of a criminal charge."

And in the unreported case of *United States* v. *Damon and Layton*, District of Minnesota, Judge Molyneaux, after trial, dismissed the indictment, holding that *both before and after the amendment*, the statute was too vague. Official memorandum, page 5, 6, January 9, 1935:

> "Even if these words ("in connection with a loan by the corporation") were in there, they have left it hazy and vague as to what would be improper charges condemned by the law . . . I am sure that I cannot leave it to the jury; I would have to say whether it was condemned by the statute. But the statute is so vague that I cannot decide the question as to whether it was in connection with a loan or was not in connection with a loan, or whether it was anything that was condemned by the statute."

In the Eastern District of New York this section is upheld but with the devastating results which Judge Molyneaux feared in the Minnesota case and which compelled him to take the case from the jury. In our case, the jury, to take only one example of similar contradictions, convicts the defendant under Counts Nos. 24, 25, for recovering $100 and acquits under Counts Nos. 21, 22, for receiving $40,

although in both instances, the services, the contracts and the receipt were without question identical and all admitted by the defendant. The jury was left in a haze, smothered by instructions which could not make clear and definite what was blurred and indefinite in the statute (R. 92, 196, 472, 476-8).

B. *Section 1467 "a", as to false statements:*

(1) What is covered by such a statute? "Any statement knowing it to be false" for the purpose "of influencing in any way" the action of the Home Owners' Loan Corporation. Who can tell what trivial slip of tongue or pen is prohibited by such a statute? It need not be in writing. It need not be under oath. It need not be material. It need not be with the intent to defraud nor to influence in an improper way nor to jeopardize the loan in the slightest degree.

The Circuit Court in its opinion says that Congress has the power "to safeguard the lending system which it had established." To safeguard against what? Material and relevant perils; substantial dangers or defects, which might seriously impair the security behind the loan; safety against whatever situations directly affected the repayment of the loan—against all such, Congress should erect protective barriers.

But any statement in the 2nd mortgagee's consent cannot endanger nor directly influence any loan made by the Home Owners' Loan Corporation. The Corporation loaned on the security of the land and building and earning capacity of the owner. These formed the central core of the transaction. Their value is not stated nor fixed nor influenced by such remote and minor things as 2nd mortgagee's consents. The very practice of the Home Owners' Loan Corporation negatives reliance on 2nd mortgagee's consents. It made three independent appraisals; it hired a title company to search the records; it hired the closing attorney;

it drew all the papers; it might or might not grant the loan, depending on the type of house, legal defects or encumbrances, lack of value or doubtful income of the owner; and then very often the loan was less than the amounts which the mortgagees had consented to take, in which event, the owner was notified that he would be obliged to get the necessary reductions and then report back to the Home Owners' Loan Corporation, which in turn, would arrange for the closing, and at this closing the final and correct adjustments would be made.

Besides, second mortgages, as a matter of common knowledge, were so deflated that they had only a nuisance or general bargaining value. It was no longer a question of precise figures as to exact sums due, but what nominal sum, if any, would be paid to the second mortgagee in return for the satisfaction piece. What was the effect of this well known practice? It destroyed the need for accuracy. Why spend time over old receipts to figure out if the correct balance due on a second mortgage was just $874.50, when $100 or so at the most would be available?

Besides, the way the second mortgagee enters the picture and the form of the consent, prepared by the Home Owners' Loan Corporation, all limit any purpose to influence to almost the vanishing point. The second mortgagee is not an applicant for a loan. The Home Owners' Loan Corporation sends him a mortgagee's consent in which it asks him to put down the amount for which the mortgage is a lien, including unpaid principal and interest, and to state what sum in bonds he will take to satisfy it. This consent is a temporary agreement for 30 days, which may be withdrawn after that on 10 day notice. As the time required invariably exceeded the 30 days, the consent was obviously a tentative offer subject to cancellation at any time before closing. (Parenthetically, in neither Count No. 5, nor Count No. 15, was there any allegation that the loan reached

closing or was ever considered or was ever made—merely that the consent was filed) (R. 13, 31).

And there is another fact which belies any genuine reliance on the so-called "false statements" as to the balance due. The very form of the consent under Count No. 15 is ambiguous. It asks for the amount for which the mortgage is a lien, including the unpaid balance and interest. Of record, the original amount appears without any reduction certificate. Therefore, it is a lien for that original amount, even though a smaller balance may actually be due. Therefore, to say as the defendant did under Count No. 15, that the second mortgage was a lien for $650, including unpaid principal and interest, is not technically incorrect as the original amount of this second mortgage was $650. (As to Count No. 5 (R. 13), the form of the prior consent was slightly different; it asked not only the sum for which the mortgage was a lien, including unpaid principal and interest, but also separately what was due on it. But in this Count, a confusion as to the original amount of the mortgage, which was actually $1000., is indicated because in the application for the owner, also made by the defendant, the original amount of the second mortgage was erroneously stated to be $650, instead of $1,000., and this confusion as to the original amount of the second mortgage may have been the decisive factor in arriving at the incorrect balance due.)

That such careless guesswork could not be the basis or source of any appreciable "influence" is further established by the final paragraph of the second mortgagee's consent. Both forms contain a paragraph in which the second mortgagee states what sums in bonds he will accept for his satisfaction piece (R. 15, 33). *What he will take in bonds is not limited. He is not legally restricted to the exact cash balance due on his mortgage.* He could ask for less or for more. He might ask for more in bonds because he disliked

the low bond interest, or because he feared that the market value of the bonds might drop. Whatever the motivating cause, what the second mortgagee would consent to take in bonds was flexible, wholly within his discretion and would supersede any guess as to the exact balance due.

In short, no loan was applied for by a second mortgagee and no loan was made on the security of a second mortgage; a satisfaction piece of the second mortgage was purchased for whatever in bonds the second mortgagee could be persuaded to take; and the loan to the owner was made solely on the security of the property and earning capacity of the owner, with no practical attention being paid to any second mortgagee's consent.

(2) Even freedom of speech and criticism might be checked and the critic rendered subject to indictment under this section. For example, suppose a critic sharply disagreed with the foreclosure policy of the Home Owners' Loan Corporation and its former practice of entering large deficiency judgments; and in making his criticism incorrectly stated the number of deficiency judgments which had been entered—the critic could be indicted for knowingly making a false statement for the purpose of influencing in any way the action of the Home Owners' Loan Corporation.

(3) It is no answer that indictments would ordinarily not follow such incorrect statements and would only be found when fraud was practiced on the Home Owners' Loan Corporation and the security for the loan was materially impaired. Such was the case of *Patrick* v. *United States,* 77 F. (2d) 442, where Patrick obtained a loan from the R. F. C. on fake warehouse receipts by falsely representing that there was wheat in the warehouse when in fact there was none. So in *McLanahan* v. *United States,* 12 F. (2d) 263, under the Federal Farm Land Bank Act, sustaining a somewhat similar section, the particular statement was

held relevant and material. Besides, the statement under the Farm Land Bank Act must be made under oath, it must be in writing and it is made by the applicant owner who expects to make an important contract with the lending agency. Likewise, in *United States* v. *Kreidler,* 11 Fed. Supp. 402, the only case found by petitioner directly involving this particular section, it was sustained on the ground that the secret agreement by the first mortgagee to take back a second mortgage was material, violated an important rule of the Corporation and might diminish the owner's ability to pay the Home Owners' Loan Corporation. But these decisions in effect amend this section, and other somewhat similar statutes, by adding the words "material" and "relevant" which were deliberately omitted by Congress. Instead of practically rewriting it, the Court should strike it out and curb the too easy creation of statutory criminals except where there is fraud or material misrepresentation or substantial impairment of the security back of the loan.

(4) The bounds of moderation or reason should not be broken unless urgently required to safeguard the agency or function in question. Of an entirely different act, in *W. B. Worthen* v. *Kavanaugh,* 295 U. S. 56, p. 60, the Court said:

> "Even when the public welfare is invoked as an excuse, these bounds (of moderation or reason) must be respected."

In other statutes, Congress has kept within more reasonable bounds. In the case of Federal Reserve Banks, the false statement must be *material* (Title 12, U. S. C., Secs. 595-6); the Federal Credit Association (Title 12, U. S. C., Sec. 840-6) punishes "any *material* false representation for the purpose of obtaining any loan"; and in the S. E. Act, Title 15, U. S. C., Sec. 78ff, the statement must be "false or misleading with respect to any *material* fact."

(5) The same objections apply to the clause: "Whoever willfully overvalues any security." And besides, if to overstate the amount due on a second mortgage is to "overvalue a security," then the section by making overvaluation a district offense has taken it out of the class of false statements and put it in its own separate category. Therefore, if a defendant states a greater amount than is correctly due that would constitute the offense of overvaluation, and the defendant could be indicted only for that particular crime. Not having been so charged, Counts Nos. 5 and 15 of this indictment, which set out only an overstatement of the balance due or overvaluation, should be dismissed.

C. As to both Section 1467 "a" and "e", not only are they too broad and indefinite, forming dragnets capable of catching big and little fish, whales and minnows, but even if they were clear and limited, they are new regulations, administrative rules, the existence and extent of which nobody knows in advance. For a considerable preliminary period, even lawyers are in a fog, courts in conflict, and the layman completely bewildered. The rule that ignorance is no defense is surely inapplicable to such a situation. That rule was based on criminal laws which were criminal by common consent and common knowledge. This general certainty and knowledge justified the presumption and the rule. Likewise, the admitted confusion and lack of knowledge on everybody's part today should be the foundation for a fairer and more sensible rule. Already, such a rule is in the making. In S. E. Act, Title 15, U. S. C., Section 78ff, there is this provision:

> "but no person shall be subject to imprisonment within this section for the violation of any rule or regulation *if he proves that he had no knowledge of such rule or regulation.*"

A further advance toward a genuine due process of law is outlined, although not commented upon, in *Morehead* v. *N. Y. ex rel. Tipaldo*, 298 U. S. 587, 606:

> "If after the hearing he approves the report, he 'shall make a directory order which shall define minimum fair wage rates,' Section 557. Upon hearing and finding of disobedience the Commissioner may publish the name of an employer as having failed to observe the directory order Section 559. If, after a directory order has been in effect for nine months, the commissioner is of opinion that persistent non-observance is a threat to the maintenance of the prescribed standards, he may after hearing make the order mandatory. Section 560. Violation of a mandatory order is a misdemeanor punishable by fine, imprisonment or both. Sec. 565."

Such a procedure is the substance of due process of law and corresponds to the actual facts of today. Any other makes a defendant the sport or victim of chance or of the ignorance of what it is impossible to know.

Point VI.

Section 1467 "e" constitutes an unlawful delegation of crime declaring power to the Home Owners' Loan Corporation.

Under this section, the corporation is authorized to decide "ordinary charges" not only for examination and perfecting of title and appraisal, but also for "like necessary services". And according as the Corporation interprets that phrase strictly or broadly, the field of criminal acts is contracted or broadened. If it decides that Act A is a "like necessary service", the charge is authorized and the citizen who performs it is not a criminal. If on the other hand, it should conclude that Act B is not a "like necessary service", then the citizen who performs it may land in jail.

Who can predict with any reasonable certainty what acts will be legal and what acts will be illegal under such an elastic standard? Has Congress the right to substitute such guess work for the definite provisions of a penal statute? We think not. When it authorizes another body to increase or decrease its range of application, pursuant to an extremely general phrase, you have "delegation running riot". And what are "ordinary charges"? By what place, time or period or average are they to be decided? The usual answer is that such things do not admit of precise measure. And the answer proves that they should not form part of a criminal statute.

POINT VII.

Where a strict construction will in practice nullify the purpose of Rule IX, that construction should not be adopted.

Granted that the strict wording of Rule IX appears to limit the trial judge to orders signed within the thirty-day period. But the extension may be for such time "as may be fixed by the trial judge." What extension may be granted within that period? Three months? Four months or more? If that may be granted by one order, why should not the trial judge—with subsequent facts more clearly justifying it—do with a few separate orders what he could have done with one? Why should a trial judge with one order, in the dark so to speak, grant three or four or more months' extension, but be impotent to grant the same total extension separately, although based on fuller information, completely warranting such action?

Even though the letter of the rule may call for a strict construction, where such a construction in practice will nullify the purpose of the rule, that construction should not be adopted. In effect, the literal construction will limit the

trial judge to one order. Upon that one signature the fate of the defendant would depend. No matter what unforeseen contingencies, no matter what harshness or injustice would be involved, no matter what efforts the appellant made, no matter if thwarted by forces beyond the appellant's control, there would be no escape from the pitiless doom of that one order.

Turn a rule into an idol exacting unjust and hideous sacrifices and what will men do? Every lawyer and every judge would instinctively be forced to cooperate to defeat it. That single order, if final, would be stretched to the very maximum. No appellant would dare ask for a reasonable or minimum extension and no trial judge would refuse even more time than is reasonably necessary when he knew that the one order was the last. In this way, the purpose of the rule would inevitably be nullified.

On the other hand, if the purpose of the rule—promptness with justice—governs, you will establish tendencies and practices and attitudes of mind on the part of attorneys and trial judges which will enforce the spirit of the rule, instead of nullifying it. The parties knowing that more than one order is obtainable, will ask and be granted only a short extension, and ordinarily that will be sufficient. And if unexpected difficulties were encountered, the trial judge, with the facts before him, could grant additional time but still be within the extension which he could have granted originally if all the facts and obstacles had been known at that time.

Point VIII.

Where a trial judge signs an order a defendant should be able to rely on it, particularly where the signing deprived the defendant of the opportunity to settle the bill on the stenographer's transcript within the time limit of the first order.

It must be remembered that on August 17, 1936, when the second order was submitted, the Circuit Court of Appeals, Second Department, had not yet ruled on the power of the trial judge to sign an order after the thirty day period. That very question was left undecided in the case of *United States* v. *Adamowicz,* 82 F. (2d) 288. Outside of the 2nd Department, up to that time, there had been several decisions—*Yep* v. *United States,* 81 F. (2d) 637, and *Gallagher* v. *United States,* 82 F. (2d) 721—which held such extensions invalid, but nevertheless the Courts reviewed the record and carefully considered the bill of exceptions. (And in the *Wolpa* v. *United States,* 84 F. (2d) 829, the original order itself was declared void, with one judge dissenting, and the subsequent decisions construing this rule were not then available.)

Such were the decisions when our second order was submitted. The facts justifying the extension were submitted to the District Attorney and to the trial judge. The district attorney signed a stipulation consenting to the extension and the trial judge signed the order, and the appellant relied on that stipulation and on that order.

If the trial judge had refused to sign, then the appellant could and would have settled the bill on the stenographer's transcript instantly and within the time limit of the first order. But when the trial judge signed the order extending her time, the need for such emergency action disappeared. That opportunity and right were lost because the appellant

relied on the order signed by the trial judge. Is such reliance so unreasonable as to justify what is in reality a denial of her appeal?

Point IX.

The Circuit Court of Appeals has the power under Rule IV and IX of the Criminal Appeals Rules to consider a bill of exceptions although filed pursuant to the order of the trial judge signed after the expiration of the thirty-day period.

However restricted the trial judge may be by Rule IX, no such fetter is imposed upon the Appellate Court. It may correct, amplify or reduce the record before it. It may modify any order of the trial judge. It is given complete control of the proceedings on appeal. The rules clearly grant this corrective power to the Appellate Courts.

In fact, the very rules adopted by the Circuit Court of Appeals, 2nd Department, with reference to assignment of errors, show that the Court has broad remedial powers. For example, under Rule IX the assignment of errors must be filed within the same time as the bill of exceptions. Strictly interpreted, no assignment should be considered if filed after the specified time. But the Circuit Court has itself adopted the following rule:

> "In criminal cases the assignment of errors provided for by Rules VIII and IX of the Supreme Court rules in Criminal cases shall conform to this rule and errors not assigned will be disregarded but the Court at its option may notice a plain error not assigned."

Clearly, this indicates the Court's opinion that it possesses the power to correct errors although not assigned within the time stipulated under Rule IX.

The petitioner is not unaware of the series of recent decisions in various Circuit Courts, from *Yep* v. *United*

States, C. C. A., 10th, 81 F. (2d) 637, to *Young* v. *United States*, C. C. A., 10th, 88 F. (2d) 305, which hold to the contrary. And we may agree with the statement in *Gallagher* v. *United States*, C. C. A., 8th, 82 F. (2d) 721, 722, that "the purpose and intent of the rules themselves were to expedite the hearing of criminal cases on appeal".

But that laudable purpose must not be twisted into a fetich of the Great God Speed. More fundamental even than a speedy appeal, is a fair appeal or a fair trial. And if the trial judge is to be held bound to the letter of Rule IX, then by double necessity there must be somewhere the power to correct the inevitable injustices which may result without any fault whatever on the part of a defendant. Even if the rules did not expressly grant such power to the Appellate Courts, they possess it by the inherent nature of their authority and function. They and only they can guarantee a defendant a fair trial. Their power to do justice cannot be circumscribed nor surrendered by Appellate Courts. They must, if they are to perform their great office, be ever ready and free to leap to the rescue of appellants caught in procedural coils without any fault on their part. No Appellate Court should ever declare in effect: "Although you have acted diligently and are without fault, we cannot save you. Neither your innocence nor diligence is of any avail. A certain rule has made slaves of us all."

Point X.

The Circuit Court of Appeals refused to review the assignment of errors and bill of exceptions solely because of the alleged want of power and not in the exercise of its discretion.

In its opinion, the Court of Appeals said:

"Although the Appellant obtained one valid extension within the permissible period, the bill of excep-

tions was not settled and filed in due time and we are therefore foreclosed from considering the errors that are assigned respecting the bill of exceptions."

There is here no question of the exercise of the Court's discretion nor of the abuse of its discretion. The sole issue is the alleged want of power, and that we have already discussed under Point IX. This adequately distinguishes it from the case of *United States* v. *Ray* (C. C. A., 2nd Dep't) 86 F. 2d) 942.

Point XI.

The appeal from the judgment of conviction is upon meritorious grounds.

While a discussion of the merits of the appeal at this time would be improper, it is proper to state just a few indisputable facts to show that the defendant did not have a fair trial and that the errors made were so prejudicial as to compel review and correction.

(a) Under Counts Nos. 11 and 12 the defendant was convicted for contracting and receiving fees although the owner admitted that she was not an applicant when the contract to modify the mortgage terms was made on June 5th; that the $50. payment was paid over to the first mortgagee on June 11th; that the defendant withdrew from the transaction on that date; and that the owner herself subsequently, towards the end of June, made her own application for a loan at the Home Owners Loan Corporation (R. 158).

(b) Under Counts Nos. 21, 22, 24 and 25 the contracts to reduce the mortgage principal, the services and the receipts were identical and all admitted by the defendant. The jury said "guilty" as to Counts Nos. 24 and 25 and "not guilty" as to Counts Nos. 21 and 22, re-

vealing the confusion of the jury under the erroneous and bewildering instructions of the trial court (R. 472, 476-8).

(c) The conduct of the Assistant District Attorney in his opening, referring to other alleged offenses, in his repeated efforts to introduce matters ruled out, the constant and unfair use of leading questions, such as—"Did Miss Kay ever say that she would fix things with the Home Owners' Loan Corporation" (R. 164)—plus incorrect statements and inflammatory language in the summation—calling the defendant a "vulture" (R. 438)—deprived the defendant of a fair trial (R. 86, 157, 163, 255, 393, 438, 442, 453, 454). Altogether, it constitutes the very type of misconduct condemned by the Court in *Berger* v. *United States*, 295 U. S. 78.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the order and the judgment of the said United States Circuit Court of Appeals for the Second Circuit be reversed by this Honorable Court, and that your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

W. S. CULBERTSON,
Counsel for Petitioner.
FRANK R. SERRI,
Counsel for Petitioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Gertrude Kay, of full age, being duly sworn, according to law, upon her oath deposes and says:

I am the petitioner in the foregoing petition named; I have read the same and am familiar with the matters stated therein. The facts, matters and things therein contained, so far as they relate to my acts, are true, and so far as they relate to acts of others, I believe them to be true.

My said petition is filed in good faith for what I verily believe to be just and legal cause, and it is not intended for the purpose of delay.

GERTRUDE KAY.

Subscribed and sworn to before me this 6th day of May, 1937.

[SEAL.]

RAPHAEL SERRI,
Notary Public, Kings County.

Kings Co. Clerk's No. 30 Reg. No. 8039.
Commission Expires Mar. 30, 1938.

APPENDIX A.

Statutes.

The provisions of the Home Owners' Loan Act, as amended April 1934, which the defendant is charged with having violated are found in Title 12 U. S. C., Section 1467 (a) and (e):

(a) Whoever makes any statement, knowing it to be false, or whoever wilfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this chapter, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000. or by imprisonment for not more than two years, or both.

(e) No person, partnership, association or corporation, shall, directly or indirectly, solicit, contract for, charge, or receive, or attempt to solicit, contract for, charge, or receive, from any person applying to the Corporation for a loan, (1) any fee, charge, or other consideration, whether bond or cash, except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services, or (2) any moneys, check, note, or other form of obligation, representing payment of any difference which may exist between the market value and the par value of the bonds of the Home Owners' Loan corporation. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than two years, or both.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S BRIEF.

WILLIAM S. CULBERTSON,
F. R. SHERI,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITIONER'S BRIEF.

Opinion Below.

The opinion of the Circuit Court of Appeals, by Manton, Circuit Judge, is reported in 89 F. (2d) 19 and appears in the record at page 595.

Jurisdiction.

The United States Supreme Court granted the petition for a writ of certiorari *Kay* v. *United States*, 300 U. S. appendix, page 38 (Part 2).

Questions Presented.

1. Whether the Circuit Court of Appeals has the power under Rules IV and IX of the Criminal Appeals Rules to

consider a bill of exceptions filed pursuant to orders of the District Court, when only the first extension order was signed by the trial judge within the 30-day period after the taking of the appeal.

2. Whether the Home Owners Loan Act of 1933, as amended in April, 1934, in so far as it creates the Home Owners Loan Corporation is constitutional.

3. Whether Section 1467 (e) of the Home Owners Loan Act, as amended in April, 1934, relating to charges, is constitutional.

4. Whether Section 1467 (a) of the Home Owners Loan Act, relating to false statements, is constitutional.

5. Whether Section 1467 (a), as to making any false statements, applies to an overstatement as to the balance due on a second mortgage or whether such overstatement is solely covered by the phrase in this section of "or whoever willfully overvalues any security."

Statement.

The indictment against this defendant, a mortgage and real estate broker, consisted of 25 counts, covering in all ten separate transactions with ten different owners.

A. *Section 1467 (e) of the Home Owners Loan Act, as Amended April, 1934.*

There were 20 counts which charged violations of Section 1467 (e) of the Home Owners Loan Act, as amended in April, 1934 (the phrase "in connection with a loan" is omitted by the amendment), relating to soliciting, contracting and receiving fees from applicants for loans contrary to its provisions. The counts do not set forth what the services were for which the defendant solicited, contracted and charged. They contain the general allegation that the

services were in connection with a loan from the Home Owners Loan Corporation and quote the words of the statute that the charge "was not for an ordinary charge or fee authorized and required by the said Home Owners Loan Corporation for services actually rendered for examination and perfection of title, appraisal and like necessary services" (R. 7).

In most instances, these contracts were in writing. They were also contingent contracts, payable only if the defendant performed her agreement to obtain the necessary reductions in certain mortgages, the waiver of interest payments, other modifications in the terms of the mortgages or the stay of threatened or pending foreclosures.

While there was some dispute as to the precise credit to be given to the defendant for her services, there was no dispute that the outside work which the defendant agreed to do was there to be done, that it required a considerable expenditure of her time and effort, and that after her intervention, reduction in the mortgage principal followed in several cases. For all her work in these ten transactions the defendant retained $140 (R. 346).

The substantial, separate and distinct character of these contracts and these services is not altered because the defendant wrote a few letters for the owners in their own names to the Home Owners Loan Corporation, nor because the Assistant District Attorney, with a barrage of leading and unfair questions, attempted to inject into the case the idea that the defendant was "to help put through the home loan" or "to get it through quickly."

The contracts made and the services rendered by the defendant were the adjustment of payments, modification of terms of mortgages, stay of foreclosures, removal of receivers, and reduction of the principal due on mortgages. The owners called in the defendant when foreclosure threats

were made or foreclosure papers actually served or a receiver appointed or a notice sent to the owners by the Home Owners Loan Corporation that their loan was approved but that the encumbrances exceeded the loan and that consequently it would be necessary for the owner to get the required reductions. In each case, some such practical difficulties confronted the owner. These obstacles were not invented by the defendant. They were real and had to be removed. This genuine need produced the contracts with the defendant.

The defendant was found "guilty" under six counts of contracting and receiving fees from applicants. She was found "not guilty" on fourteen counts of soliciting, contracting and receiving. The "guilty" transactions involving contracting and receiving cannot be distinguished from the "not guilty" transactions and in all these cases, the essential facts were admitted by the defendant.

For example, compare the summary of the undisputed facts in two transactions:

> Counts Nos. 24 & 25. The Home Owners Loan Corporation notifies the owner that the loan is granted but that the mortgages exceed the loan. Problem: how to get the 1st mortgage of $9,000. and the 2nd of $1,000. reduced? The defendant broker is engaged. She negotiates with the various mortgagees. Substantial reductions are obtained, although a dispute arises as to whether the defendant is to be credited with a reduction of $600. or $900. Defendant is paid $100. *Verdict: Guilty* (R. 87, 92, 95).
>
> Counts Nos. 21 & 22. In this case, the 1st mortgage of $7,000. and the 2nd of $1,300. exceeded the loan which was tentatively approved by the Home Owners Loan Corporation. The same problem of reduction. Contract made by the owner with the defendant to reduce these mortgages. The defendant negotiates with the mortgagees. About $500. is admittedly reduced,

although the usual dispute ensues as to just how much is to be credited to the efforts of the defendant. The defendant also wrote a two page letter for the owner in the owner's name, to the Home Owners Loan Corporation. Defendant is paid $40 (R. 192, 198). *Verdict: Not Guilty.*

B. *Two Counts under Section 1467 (a) to False Statements.*

Besides the six counts under Section 1467 (e) as to contracts and receipt of fees, the defendant was convicted on Counts Nos. 5 and 15, which charged her with knowingly making two false statements in two second mortgagee's consents as to the balance due on these two mortgages for "the purpose of influencing the action of the Home Owners Loan Corporation," contrary to Section 1467 (a) of the Home Owners Loan Act. There is no allegation in either count that any loan to the respective owner was approved or actually made or that any payment was made to the defendant or to anybody else or that the two applications ever reached the stage of being sent to a closing attorney. Only the filing is alleged (R. 13, 31).

The second mortgagee's consent to take bonds is prepared by the Home Owners Loan Corporation, is mailed to the mortgagee by the corporation and is later filed by the mortgagee with the Home Owners Loan Corporation. As the copy set out in the indictment indicates, it is in form an offer by the mortgagee which states the amount for which the mortgage is a lien, including the unpaid balance of principal and interest, and the amount in bonds, plus a nominal cash sum, which the mortgagee will accept for a satisfaction of the mortgage. The consent is temporary, for a thirty day period, and may be withdrawn on ten days notice to the State manager of the Corporation (R. 14, 32).

The mortgagee's consent to take bonds is not under oath

nor acknowledged nor verified in any form nor is there any warranty as to the accuracy of the information (R. 14, 32).

The first form of mortgagee's consent as prepared by the Home Owners Loan Corporation in Count 5, called for more detailed information as to the mortgage than the revised form in Count No. 15. The detailed information was not given (R. 15). Under Count 5, the consent ends with the statement that a certain amount was due to the mortgagee (R. 15). There is no such specific statement under Count 15 (R. 33).

C. *All Three Fraud Counts Nos. 6, 16 and 10 Dismissed on the Government's Own Motion During the Trial.*

Ordinarily, these three counts could be ignored. But in this case they are significant because they were the only three counts charging fraud—one, that of pretending to be an employee of the Home Owners Loan Corporation and two counts which charged that the two false statements in the two mortgagee's consents were made with the intent to defraud the Home Owners Loan Corporation and the two home owners. All these three counts were dismissed on the Government's own motion (R. 286).

When it is thus established that the two false statements were not made to defraud the home owners, and that they were not made to defraud the Home Owners Loan Corporation, what "crime" is there left?

D. *The Bill of Exceptions.*

Petitioner repeats what was set forth in her reply brief and not disputed before the Circuit Court of Appeals. Convicted on May 29, 1936, she moved swiftly to comply with the rules governing criminal appeals. Notice of appeal was filed promptly on June 1, 1936; during that same week written notice and request was made upon the Court

stenographers to furnish a copy of the minutes of the trial. On June 13th, the Court stenographers replied in writing demanding payment in advance of $400. On June 15th, a check for the full amount was sent by the petitioner. About the end of June the stenographers stated that because of the rush of prior official business it would be impossible for them to deliver a transcript. The District Attorney and the trial judge were informed of these facts and an order was signed on June 30th, extending the defendant's time to August 18th. Then there followed inquiries every week of the stenographers and the same answer; that prior official business would delay delivery. The last letter was written on July 28th urging that the copy be furnished at the earliest opportunity. Several days afterwards, the copy was brought to the defendant and there remained a little over two weeks in which to prepare and print and settle the bill. Every effort was made by the defendant's attorney to expedite the work, but again the appellant's efforts were unavailing. The printer was unable to furnish the work on time. When he so informed the appellant, the situation was explained to the District Attorney on or about August 17th, and he signed the stipulation extending the appellant's time and the trial judge signed the order on August 18th. The subsequent adjournments to October 19th, 1936, were all based on similar stipulations of the District Attorney and orders of the District Court.

The appellant relied on the stipulations of the District Attorney and the orders of the trial judge. If they had not signed, the bill could have been settled on the stenographer's minutes either on August 17th or the 18th.

The Circuit Court held that it lacked the power to consider the bill of exceptions, and its decision rests solely on its mistaken belief as to its authority.

Summary of Argument.

1. The Circuit Court of Appeals has the power under Rules IV and IX of the Criminal Appeals Rules to consider the Bill of Exceptions, and since its refusal was based solely on the alleged want of power, it committed reversible error.

2. The Home Owners Loan Act of 1933, in so far as it creates the Home Owners Loan Corporation, is invalid:

(a) Congress cannot incorporate a private bank. The Home Owners Loan Corporation is exclusively a Corporation with limited private banking powers.

(b) The Act does not declare the Corporation to be a fiscal agent of the United States nor a depositary of public moneys nor require it to invest any funds in U. S. Bonds.

(c) The Act cannot be sustained under the "taxing for general welfare clause" because in substance the Corporation is a corporate substitute for the taxing and appropriating power, a device to evade using this power and not an exercise of it.

(d) And if it be considered an exercise of the taxing power, it is not for the general welfare because it did not affect any vital national interest or activity, merely reducing for a limited number of owners the nominal rate of interest by 1% staying some foreclosures and shifting the right to foreclose from many mortgagees to one large corporation.

(e) And whether it be for the general welfare or not, it invades a field of local activity reserved to the people and the states under the 9th and 10th Amendments.

(f) The Act constitutes an unlawful delegation of power by Congress.

3. Section 1467 "e" of the Home Owners Loan Act, as amended in April, 1934, is invalid because it violates both the 5th and 6th Amendments:

(a) The Circuit Court of Appeals admits that "until the Corporation defined the fees which could properly be charged the crime was too vague and indefinite".

(b) Although there is not one word about the regulations in the indictment, the Circuit Court at the end of its opinion stated that the regulations had been issued and that the regulations so assumed cured the admitted vagueness of this section—apparently using the forbidden bill of exceptions to affirm the judgment, but not to reverse it.

(c) The regulations—which are found in the bill of exceptions only—do not adequately clarify the statute except as to services of appraisal, examination and closing title rendered by persons employed by the Corporation (R. 425); they leave untouched the zone covered by "and like necessary services", and the whole field of other services rendered by persons not employed by the Corporation.

(d) This section is invalid because if applied to persons not employed by the corporation, it constitutes a denial of their liberty and property without due process of law.

(e) Unlawful delegation of power. Not only is the Corporation to fix "ordinary charges" for specified services, but also for "like necessary services", and upon its definition of these indefinite clauses, the list of crimes is expanded or contracted.

4. Section 1467 "a" of the Home Owners Loan Act is invalid because it is too vague and uncertain, makes acts criminal without any intent to defraud or any improper motive, or any possible detriment to anybody and may be stretched so far as to infringe the right of free speech.

5. The appeal from the judgment and conviction is upon substantial and meritorious grounds.

Point I.

The Circuit Court of Appeals has the power under rules IV and IX of the Criminal Appeals Rules to consider a bill of exceptions although filed pursuant to the order of the trial judge signed after the expiration of the thirty-day period.

Since the petition for certiorari in this case, the opinion of the Supreme Court in *Ray* v. *U. S.*, 301 U. S. 158, p. 163 definitely establishes that however restricted the district court judge may be by Rule IX, no such fetter is imposed upon the Appellate Courts. The Circuit Court of Appeals under the Criminal Appeals Rules may correct, amplify or reduce the record on appeal. It may modify any order of the trial judge. It is given complete control of the appeal proceedings. The rules, says the Supreme Court in the *Ray* case, clearly grant this corrective power to the Appellate Courts. Regardless of the limitations on the trial Court, the Circuit Court of Appeals could have reviewed the bill of exceptions in this case, notwithstanding that it was not filed during the period of the first valid extension as granted by the trial judge.

Therefore, the Circuit Court of Appeals committed reversible error in holding that it lacked such power and that it was "foreclosed from considering the errors that are assigned respecting the bill of exceptions". *Kay* v. *U. S.*, 89 F. (2d) 19, p. 21.

Point II.

The Circuit Court of Appeals refused to review the bill of exceptions because of the alleged want of power and not in the exercise of its discretion.

In the case of *U. S.* v. *Ray* (C. C. A. 2nd Dept.), 86 F. (2d) 942, while it ruled erroneously that it had no power to review the bill of exceptions, the Circuit Court of Appeals

said plainly that even if it had the power, it would not review it because the appellant had been negligent. And because of this finding of negligence, the Supreme Court affirmed. *Ray* v. *U. S.*, 301 U. S. 158, p. 167.

There is no such issue in our case. The decision of the Circuit Court of Appeals is based exclusively on its belief that it lacked the power to review the bill of exceptions. It did not say that the appellant had offered inadequate excuses nor that her oral motion on the argument of the appeal, repeated in her reply brief, was not timely. The Circuit Court of Appeals restricted its ruling to the sole question of want of power. The trial Court had granted one valid extension during the 30 day period. No other extension, it contended, could be made by anybody, neither in the District Court nor in the Appellate Court. The appellant's doom was irrevocably sealed because the 30 day rule closed all avenue of escape. No one could come to her rescue because no one had the power. The Rules were inexorable and had to be obeyed. Briefly, the Circuit Court of Appeals, summed up its position, 89 F. (2d) 19, p. 21:

> "Respecting the bill of exceptions, although the Appellant obtained one valid extension within the permissible period, the bill of exceptions was not settled and filed in due time and we are therefore foreclosed from considering the errors that are assigned."

Since its refusal rested solely on its mistaken view of its authority its judgment should be reversed.

Point III.

The appeal from the judgment of conviction is upon meritorious grounds.

Anticipating the possible claim that it is futile to ask the Circuit Court of Appeals to consider the bill of exceptions, because the errors are trivial, it is proper at this

time to give a few samples which prove indisputably that the defendant did not have a fair trial and that the errors were so prejudicial as to compel correction:

(a) Under Counts Nos. 11 and 12 the defendant was convicted for contracting and receiving fees although the owner admitted that she was not an applicant when the contract to modify the mortgage terms was made on June 5th; nor was the owner an applicant on June 11th when the $50. payment, received by defendant, was paid over by her to the first mortgagee; the defendant withdrew from the transaction on June 11th; and *not until the end of June did the owner become an applicant for a loan at the Home Owners Loan Corporation* (R. 158).

(b) Under Counts Nos. 21, 22, 24 and 25, the contracts to reduce the mortgage principal, the services and the receipts were identical and all admitted by the defendant. The jury said "guilty" as to Counts Nos. 24 and 25 and "not guilty" as to Counts Nos. 21 and 22, revealing the confusion of the jury under the erroneous and bewildering instructions of the trial court (R. 472, 476-8).

(c) The conduct of the Assistant District Attorney in his opening, referring to other alleged offenses, in his repeated efforts to introduce matters ruled out, the constant and unfair use of leading questions, such as "Did Miss Kay ever say that she would fix things with the Home Owners Loan Corporation"? (R. 164)—plus incorrect statements and inflammatory language in the summation—calling the defendant a "vulture" (R. 438)—deprived the defendant of a fair trial (R. 86, 157, 163, 255, 393, 438, 442, 453, 454). Altogether, it constitutes the very type of misconduct condemned by the Court in *Berger* v. *United States,* 295 U. S. 78.

Point IV.

The Home Owners Loan Corporation is not authorized by the fiscal powers of Congress because the act creating it does not make it a depositary of public moneys, nor a fiscal agent of the United States nor require it to invest any funds in United States Government bonds.

In his opinion of August 22, 1933, the Attorney General cites *McCulloch* v. *Maryland,* 4 Wheat, 316; *Osborn* v. *United States Bank,* 9 Wheat. 738, and *Smith* v. *Kansas City Title Co.,* 255 U. S. 180, to prove the power of Congress to incorporate the H. O. L. C.

The appellant disagrees with this interpretation. While appreciating the warning of Judge Hand, applied to other cases, in *United States* v. *Schechter,* 76 F. (2d) 617, p. 625, that it would be "disingenuous to pretend that the *ratio decidendi* of such decisions is susceptible of statement in general principles," we believe that a more thorough analysis will disclose the major pillars upon which those corporate structures were built and that these necessary pillars are missing in the Home Owners Loan Act.

What were the legal pillars upholding the United States Bank? In *McCulloch v. Maryland,* 4 Wheat. 316, p. 426, after paying tribute to the "splendour of eloquence and strength of argument, seldom if ever, surpassed," Chief Justice Marshall held at page 422:

> "That it is a convenient, a useful and essential instrument in the prosecution of its fiscal operations. (U. S. Government) is not now a subject of controversy."

In *Osborn* v. *United States Bank,* 9 Wheat. 738, the Court reaffirmed its position in *McCulloch* v. *Maryland,* that the U. S. Bank was necessary and proper for carrying on the fiscal operations of government, and that its public function

would be crippled if its private activities were prohibited. Describing the U. S. Bank "as a machine for the fiscal operations of the government," the Court wrote, pages 865, 872:

> "The Court has already stated its conviction, that without this capacity to trade with individuals, the Bank would be a very defective instrument, when considered with a single view to its fitness for the purposes of government. On this point the whole argument rests" (p. 865).
>
> "Attempts have been made to dispense with it, and they have failed; serious and very weighty doubts have been entertained of its constitutionality, but they have been abandoned; and it is now become the functionary that collects, the depositary that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away, the millions that pass annually through the national treasury; and all this, not only without expense to the government, but after paying a large bonus, and sustaining actual annual losses to a large amount; furnishing the only possible means of embodying the most ample security for so immense a charge" (p. 872).

A further addition of private business power was permitted in the case of *First National Bank v. Union Trust Co.*, 244 U. S. 416. The Federal Reserve Act authorized National Banks to act as trustees, executors, etc. when allowed by the Reserve Board and in conformity with state law. In upholding this extension, the Court said at page 425:

> "What those cases (McCulloch *v.* Maryland, 4 Wheat. 316 and Osborn *v.* Bank, 9 Wheat. 738) established was that although a business was of a private nature and subject to State regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress, of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as part of its public authority."

A little later, in the case of *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, the Federal Farm Land Bank was assailed, not as a permissible mixture of public and private enterprise, but as exclusively a private enterprise—lending money on farm lands secured by first mortgages—and that this private character could not be given a public aspect by the words in the statute declaring the banks depositaries of public money and fiscal agents of the government. The words, it was argued, were just a pretext. The Court answered that if the words were written in the statute, that was sufficient:

> "We, therefore, conclude that the creation of these banks, and the grant of authority to them to act for the government as depositaries of public moneys, and purchasers of Government bonds (5% required to be so invested), brings them within the creative power of Congress although they may be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest" (p. 211).

We may now attempt a summary: (A) An appropriate fiscal agent for the U. S. may be incorporated by Congress if declared to be such and actually operating and needed in that capacity; (B) Powers of private business may be granted to the public fiscal agent when necessary to strengthen or invigorate its public function; (C) The business of private banking is a private business and the loaning of money to private individuals, secured by mortgages on their own property, cannot be undertaken separately by Congress; (D) If an agency is declared by Congress to be a depositary, a fiscal agent and required to invest in U. S. bonds, then may be attached to its public power the private business power of loaning money on first mortgages.

Paragraph "D" or *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, sits on the very edge of the Constitution.

Whether legal scholars are correct in characterizing the opinion as "curiously narrow" (Prof. Corwin, 36 H. L. R. 548, 578) need not be argued. Certain it is that no court has ventured beyond its extreme limits. No court has yet said that Congress under its fiscal powers can create a corporation, without a public fiscal function, without declaring it to be a fiscal agent of the U. S. Government and equipped solely with the powers to do a private banking or mortgage business. In fact, the contrary has been held and never doubted, *Osborn* v. *U. S. Bank,* 9 Wheat. 738, page 860:

> "It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a Corporation."

And yet that is precisely the position of the H. O. L. C. It stands as a corporation with limited private banking powers to make loans to private individuals on their private homes. True, it is managed by the same board as manages the Home Owners Loan Banks, it is labelled an "instrumentality" of the United States, its stock is owned by the Government, it has the free use of the mails and its bonds were first guaranteed as to interest and then as to principal by the United States. But these facts do not add to its public powers and functions. It is not declared by Congress to be a depositary of public moneys; it is not declared to be a fiscal agent of the United States; and it is not required to invest in United States bonds. It lacks the public foundation upon which the private powers may be attached. It remains a corporation equipped to do solely a private banking or mortgage business.

Subsequent amendments in 1935 authorizing the H. O. L. C. to purchase bonds of the Federal Home Loan Banks, shares of the Federal Savings and Loan Associations and of the Federal Savings and Loan Corporation, even if they could change the character of the H. O. L. C.,

cannot be considered, as the indictment deals solely with the Act of 1933, as amended in April, 1934.

Whenever Congress intended to make a corporation a fiscal agent of the United States, it has always stated that fact clearly. A formidable list of banking and similar agencies have been so endowed by express provision in their respective statutes. In Title 12, U. S. C. Sec. 90, National Banks are declared to be depositaries of public moneys and financial agents of government. Likewise: Federal Deposit Insurance Corp., Sec. 264 (1); all State banks or trust companies if members of the Federal Reserve system, Sec. 332; Federal Reserve Banks, Sec. 391; all Federal land banks and joint stock land banks, Sec. 701; the Central Bank for Co-operatives, the Production Credit Corp., Production Credit Associations, the Federal Farm Mortgage Corp. and Banks for Co-operatives, Sec. 840-62; Federal Intermediate Credit Banks, Sec. 1024; Nat'l Agricultural Credit Corps., Sec. 1172; Federal Home Loan Banks, Sec. 1434; Federal Savings & Loan Associations, Sec. 1464 (k) (in *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315, the section of the H. O. L. Act regulating the conversion of State associations into Federal S. & L. Ass'ns was invalidated, but power of Congress to create them not decided; "as to that we do not indicate an opinion either one way or the other") (p. 336); Housing Mortgage Association, Sec. 1723; Federal Savings & Loan Insurance Corp., Sec. 1725 (d); each Federal Credit Union, Section 1767; and R. F. C., Title 15, U. S. C. Sec. 612. (In *Langer* v. *U. S.*, 76 F. (2d) 817, the Court upheld the R. F. C. because Congress expressly authorized it to act as financial agent and depositary of the Government.)

Not only did Congress fail to confer such powers on the Home Owners Loan Corporation, but it actually authorized the Federal Reserve Banks to act as fiscal agents for

the H. O. L. C. Title 12, U. S. C. Section 1469-1 reads: "The Federal Reserve Banks are authorized, with the approval of the Secretary of the Treasury to act as depositaries, custodians and fiscal agents for the H. O. L. C." In short, the H. O. L. C. was never created as an agent for the fiscal operations of the U. S., and it was not able nor equipped to act as such for itself.

Point V.

Congress may tax and appropriate for the general welfare but it cannot create a corporate device which in effect dispenses with the taxing power and is a substitute for it.

Admittedly, as the Circuit Court of Appeals states in its opinion, Congress is granted the power to tax to promote the general welfare of the United States. It may appropriate and spend for a variety of public purposes, beyond the precise ambit of the delegated powers, *U. S.* v. *Butler*, 297 U. S. 1. This decision ended a long continued debate among legal scholars which threatened to engulf our lawyers with an increasing flood of articles and books, although many were excellent and thorough, and settled the debate wisely by adopting the broad and liberal interpretation of Hamilton, the lawyer, rather than the narrow and strict interpretation of Madison, the layman. (See Lawson, "The General Welfare Clause"; Grant, "Commerce, Production and the Fiscal Powers of Congress," Yale L. J. (1936) No. 5, p. 751, No. 6, p. 991; Post, "The Constitutionality of Government Spending for the General Welfare"; McGuire, "The New Deal and the Public Money," Georgetown L. J. (1935), Vol. 23, No. 1, p. 1.)

But while not disputing the existence of the power, we do ask: is the Home Owners Loan Corporation an exercise of that power? Or is it a corporate device to avoid using that power? No tax supports it and no appropriation of

funds from the treasury of the United States. To purchase the capital stock of not over $200,000,000, to which the Secretary of the Treasury is authorized to subscribe, the Home Owners Loan Act provides that: "the Reconstruction Finance Corporation is authorized and directed to allocate and make available to the Secretary of the Treasury the sum of $200,000,000 or so much thereof as may be necessary." Aside from that, the Home Owners Loan Corporation is completely the creature of the power to incorporate. As such, it is authorized to issue its own bonds, at first not exceeding two billions and later almost five billions, or to be exact not over $4,750,000,000. In essence, there was created a corporation, which spread and grew far beyond the possible allocation by the R. F. C. of not over a couple hundred millions, into a corporate giant with billions of bonds. This whale of a corporation was not produced by the taxing and appropriating power of the United States. It grew into a corporate leviathan without taxes, without appropriation and without the spending power of the government, and solely on its own corporate fiat it expanded from a two billion into an almost five billion dollar institution.

It may be said correctly that the Home Owners Loan Corporation is a corporate entity which dispenses with the exercise of the taxing and appropriating power of the government. Instead of taxing and appropriating out of the general funds of the United States, there was invented a substitute. In effect, Congress says: "We shall not tax nor appropriate government funds; we shall create a corporate being capable of standing on its own feet and which can issue its own bonds."

Obviously, the legal father of such a corporate child is the power to incorporate. Such power is not expressly granted to Congress, although it may be implied when the

corporation is a convenient, useful and essential instrument to execute a power delegated to Congress. *But the incorporating power may not be implied to avoid using the delegated power.* If that were permitted, small appropriations would be sufficient to spawn an unlimited corporate progeny, not through the exercise of the taxing and spending power, which Congress has, but by dispensing with the taxing power and substituting corporate creatures for every purpose which might conceivably be labelled general welfare. Practically speaking, Congress could then transform an implied power of limited scope into an express power of general incorporation.

POINT VI.

If the Home Owners Loan Corporation be considered an exercise of the taxing power, it is not for the general welfare because it changes slightly certain creditor-debtor relations by reducing by 1% the interest rate of some home owners, and shifting the right to collect and to foreclose from many mortgagees to one large corporation without affecting any vital national interest or relationship.

The 1937 revised edition of Farrand's "The Records of the Federal Convention" does not furnish any additional information as to the general welfare clause except to add a letter of Madison to Cabell containing a brief summary, confirming the outline in the first Edition, that the clause at first "simply expressed 'a power to lay laws, duties, imposts and excises' without pointing out the objects". Then the solicitude about the public debts led to the addition "to pay the debts" and there was substituted the phrase "for the expenses of the government", and finally the terms of the old Articles of Confederation were used: provide for the common defense and general welfare (Vol. 4 p. 85-6).

What is the general welfare? The concept is not static (*Helvering* v. *Davis,* 81 Sup. Ct. (L. Ed.) 804, p. 808, 301

U. S. —). It is broad enough to cover old age benefits under the Federal Social Security Act (*Helvering* v. *Davis, supra*) and unemployment insurance to relieve the unemployed and their dependents (*Charles C. Steward Mach. Co.* v. *Davis,* 81 Sup. Ct. (L. Ed.) 779, 301 U. S. —).

In its opinion, the Circuit Court of Appeals gives a list of other appropriations made by Congress to prove "what has been accepted to be the expenditure of public funds for a public purpose". As to these, the first answer was made by this Court in *United States* v. *Butler,* 297 U. S. 1, p. 73:

> "Such expenditures have not been challenged because no remedy was open for testing their constitutionality in the courts."

However, even if such appropriations were tested and upheld, they reveal, as does the Social Security Law, certain characteristics which place them apart from our case. When you deal with the conservation of natural resources, the health, the livelihood or education of the people, you have something "truly national" (*U. S.* v. *Butler,* 297 U. S. 1, p. 87). Whether millions of people throughout the country shall eat or starve, work or be idle, educated or ignorant, is a matter of national concern. On such things depends the very existence and future of the nation, the quality of its manhood and womanhood. They impinge on life itself and affect people in their most general and vital relations as citizens, as producers and as consumers. In such instances, the rescuing arm of the Government should be free to protect its people from serious national ills.

Another distinguishing feature of these appropriations to promote the people's health and education, meet the needs of the aged and unemployed or preserve natural resources, is that they do not involve ordinary private transactions. They deal with the domain of public or general relations, a

field hardly touched by private contract or private enterprise.

How different is the H. O. L. C.: an agency to reduce interest rates from 6% to 5%, a slight shuffling of the debtor-creditor relationship. The debtor now substitutes for his existing contract to pay 6% a new contract with a large corporation to which he agrees to pay 5% over a longer period of time, with certain installments of principal. The right to foreclose is not stayed nor abolished; it is shifted from many mortgagees to one large corporate mortgagee. The right to take deficiency judgments is not stayed nor abolished; it is centered in the Home Owners Loan Corporation.

Appellant realizes that whether an expenditure is for the general welfare "is a practical question addressed to the law making department" (*Carmichael* v. *Southern Coal Co.*, 301 U. S. 495, 515) and that "it will require a very plain case to warrant the courts in setting aside the conclusion of Congress in that regard" (*Cincinnati Soap Co.* v. *United States*, 301 U. S. 308).

We submit that the H. O. L. C. is such "a very plain case". A minor change of private debtor-creditor relationships cannot constitute "the general welfare". If it does, then the sky is the limit as to what may be done under this clause.

Point VII.

And whether or not the Home Owners Loan Corporation be an exercise of the taxing power for the general welfare, it is invalid because it invades the rights and powers reserved to the States and the people.

While the taxing power is "the least limitable" of powers, whose boundaries will ever elude precise description, there is no dispute that every delegated power, however general, is hedged in by the very Constitution in which it is found. For example, all of the delegated powers are

subject to the Fifth Amendment. (*Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555, p. 589; *Wright* v. *Vinton Branch,* 300 U. S. 440, p. 457). And with the exception of powers over money matters—where there is coupled with the grant to Congress a definite prohibition against their exercise by the states—and possibly that over foreign commerce (*Board of Trustees* v. *United States,* 289 U. S. 48, p. 57), all of the delegated powers are subject to the restraints of the 9th and 10th Amendments.

Legal scholars have not adequately considered these two amendments. The very phrase of Prof. Corwin "dual federalism" tends to obscure the real situation, which might be more accurately described as one of "triple federalism". It is not merely a case of the nation and the states. The 9th Amendment refers to rights *"retained by the people"*. The Tenth Amendment mentions powers reserved, not only to the states, but *"to the people"*. We have established a triple federalism: the National Government, the states and the people. There are some powers which have been granted to Congress, some to the states and some powers and rights have been reserved to or retained by the people.

Unless the taxing-for-the-general-welfare is subject to these restrictions, it may be stretched to cover every substantial activity in the country, and with such indefinite expansion Congress becomes omnipotent, and, not only the local powers of the States, but the local rights and powers of the people may be obliterated. Such a concentration of power destroys the balance and separation of powers and rights between the Nation, the States, and the people which our system of "triple federalism" ordained, and it tends to produce the very apoplexy at the center and paralysis at the extremities which federalism prevents.

The Circuit Court of Appeals in its opinion says that there is no attempt to employ the taxing and spending

power to accomplish prohibited ends as there was found to be in *United States* v. *Butler*, 297 U. S. 1. But is the difference visible? The lending of money to private individuals on their private houses, the rates of interest to be paid by them, the terms of their mortgages, fees of mortgage brokers, appraisals of private homes, examination of titles to such homes, the closing of loans to the same homes and the foreclosure of mortgages are indubitably private and local activities. They are just as private and local an activity as the planting of wheat or potatoes. If Congress, through the taxing power, cannot invade the local field of making contracts with farmers to reduce their acreage of wheat, it cannot enter the local field of making contracts to reduce the rate of interest payable by a homeowner, to substitute a new form of mortgage, with a long term investment instead of a short term investment, with amortization of principal, and with the customary power to foreclose in the event of default.

So with the Guffey Coal Act. It might have stabilized conditions in some 20 states, beneficially affected hundreds of thousands coal miners, not on a minor point like a one (1%) per cent interest reduction, but as to whether they could work and live, and possibly produced good repurcussions throughout the other states. Yet the government in its brief, *Carter* v. *Carter Coal Co.*, 298 U. S. 238, p. 289, conceded that the tax stood or fell, not with the general welfare clause, but with the power to regulate interstate commerce.

And by analogy, if Congress, according to *Ashton* v. *Cameron County Dist.*, 298 U. S. 513, cannot extend the bankruptcy power to provide for voluntary petitions by embarrassed districts to readjust their debts because the reserved powers of the States block the way, with equal certainty the same powers and rights reserved to the

people or the States block voluntary applications by embarrassed debtors for the readjustment of the encumbrances on their homes.

Nor is the contrary held by the case of *Smith v. Kansas City Title Co.*, 255 U. S. 180, also cited in the opinion of the Circuit Court of Appeals. While the argument that the Farm Land Bank could be sustained under the taxing for general welfare clause was pressed vigorously, the Court merely continued the line of reasoning of Chief Justice Marshall as to the incorporation of a National Bank. If a National Bank or a Farm Land Bank were authorized to act as fiscal agent of the United States, it could also be empowered to trade with individuals. But trading or loaning money to individuals remained a private enterprise, a local activity, which Congress could not undertake by a Corporation devoted exclusively to that local and private field.

POINT VIII.

Sections 1467 "A" and "E" violate both the 5th and 6th Amendments, deprive people of their liberties and contract rights without due process of law, punish them for not knowing a new law, vague and uncertain, about which lawyers are in doubt and the lower courts in conflict.

Even if the main trunk should stand, these two branches of the Act should be lopped off unhesitatingly. (In *Hopkins Savings Association* v. *Cleary*, 296 U. S. 315, another section of the Home Owners Loan Act regulating the conversion of State associations into Federal Savings and Loan Associations was invalidated.)

A. *First, let us examine Section 1467 "e":* The Circuit Court of Appeals expressly admits in its opinion that the statute by itself is too vague and indefinite: "It is undoubtedly right to say that until the Corporation defined

the fees which could properly be charged the crime was too vague and indefinite." (*Kay* v. *U. S.*, 89 F. (2d) 19, p. 22.)

What has cured this obvious defect? The regulations of the Corporation? "At the time that the appellant committed the acts charged," so continued the opinion of the Circuit Court of Appeals, "the Corporation had already issued its regulations and defined the fees and charges which could validly be solicited and received". (*Kay* v. *U. S.*, 89 F. (2d) 19, p. 23.)

But where is the proof that any such validating regulations had been issued? The indictment does not contain a word about any regulations; it repeats the exact words of the statute (R. 7). *The only proof of any regulations appears in the bill of exceptions, which the Circuit Court claims it is forbidden to consider.* Well, if it cannot look at it to reverse the judgment, it cannot peek at it to affirm the judgment.

However, the regulations, as set forth only in the bill of exceptions (R. 422-6), do not remove the essential vagueness and indefiniteness of the statute. They fix the fees for a few specified services such as appraisal, examination of title and the closing of loans. But these remove only the lighter fog surrounding the statute. What are "like necessary services," probably the broadest expression in this section? To whom does the section apply? Is it limited to appraisers, examiners and attorneys employed by the Home Owners Loan Corporation? Does it include the services of mortgage brokers engaged by the owners to modify or adjust or obtain reductions of mortgages? What about services rendered to an applicant which have only an indirect bearing on the loan? The regulations will be searched in vain for any answer (R. 422-6).

The vagueness in the statute begets the conflict in the decisions. In *Handler* v. *Hill* (C. C. A. 3rd C), 90 F. (2d)

573, this section was sustained as unambiguous, but the court, it is submitted, was influenced by the erroneous assumption that the penal clause in the case of *Margolin* v. *U. S.*, 269 U. S. 93, was similar to the clause in the Home Owners Loan Act. While part of the phraseology is alike, there are essential differences which must not be overlooked. In *Romano* v. *Magliulo*, 278 N. Y. S. 986, this section was restricted to the employees of the Home Owners Loan Corporation, namely, the appraisers, the title examiners and the closers who were employed by the Corporation itself. (Admittedly, the defendant in our case was not employed by the Home Owners Loan Corporation.) In *United States* v. *Willard*, 8 Fed. Supp. 356, p. 357, nothing is said as to any such restriction, but the court held that until "ordinary charges" are regulated and defined by the Corporation "the statute is lacking in that certainty which is required to uphold criminal statute and indictments thereunder against attack for vagueness and indefiniteness". As to the construction of the statute after the regulations were promulgated, the Court did not decide.

Another variation is found in *United States* v. *Monoghan*, Eastern District of Mo., Jan. 9, 1935, par. 17,711, Reference Library C. C. Corp. Before the amendment of April 1934, the statute was certain enough, so the Court ruled. As to the amended statute, upon which our indictment is founded, the Court said:

> "The statute as above set out was effective from June 13, 1933 until April 27th, 1934, when it was amended. The amendment omitted the words 'in connection with a loan by the Corporation, or an exchange of bonds or cash advanced under this Act'. This apparent oversight has rendered the present statute entirely too vague to constitute the basis of a criminal charge."

And in the unreported case of *United States* v. *Damon* and *Layton*, District of Minnesota, Judge Molyneaux, after trial, dismissed the indictment, holding that *both before and after the amendment*, the statute was too vague, Official memorandum, page 5, 6, January 9, 1935:

> "Even if these words ('in connection with a loan by the corporation') were in there, they have left it hazy and vague as to what would be improper charges condemned by the law * * *. I am sure that I cannot leave it to the jury; I would have to say whether it was condemned by the statute. But the statute is so vague that I cannot decide the question as to whether it was in connection with a loan or was not in connection with a loan, or whether it was anything that was condemned by the statute."

In the Eastern District of New York this section is upheld but with the devastating results which Judge Molyneaux feared in the *Minnesota* case and which compelled him to take the case from the jury. In our case, the jury, to take only one example of similar contradictions, convicts the defendant under Counts Nos. 24, 25, for receiving $100 and acquits under Counts Nos. 21, 22, for receiving $40.00, *although in both instances, the services, the contracts and the receipt were without question identical and all admitted by the defendant.* The jury was left in a haze, smothered by instructions which could not make clear and definite what was blurred and indefinite in the statute (R. 92, 196, 472, 476-8).

B. *Section 1467 "a", as to false statements:*

(1) What is covered by such a statute? "Any statement knowing it to be false" for the purpose "of influencing in any way" the action of the Home Owners Loan Corporation. Who can tell what trivial slip of tongue or pen is prohibited by such a statute? It need not be in writing.

It need not be under oath. It need not be material. It need not be with the intent to defraud nor to influence in any improper way nor to jeopardize the loan in the slightest degree. In short, it lacks all the essential elements of an understandable crime. It violates that wise Roman rule: *de minimis non curat lex.*

The Circuit Court in its opinion says that Congress has the power "to safeguard the lending system which it had established." (*Kay* v. *United States,* 89 F. (2d) 19, page 22. To safeguard against what? Material and relevant perils; substantial dangers or defects, which might impair the security behind the loan; safety against whatever situations directly affected the repayment of the loan—against all such, Congress should erect protective barriers.

But any statement in the 2nd mortgagee's consent as to the balance due cannot endanger nor directly influence any loan made by the Home Owners Loan Corporation. The second mortgagee is not an applicant for a loan. The corporation sends him a mortgagee's consent in which it asks him to put down the amount for which the mortgage is a lien, including unpaid principal and interest, and to state what sum in bonds, plus nominal cash, he will take to satisfy it. The very practice of the H. O. L. C. negatives reliance on the 2nd mortgagee's consent. What were the central and operative facts which produced the loan to the homeowner? The value of the land, the building and the earning capacity of the owner. None of these essentials were fixed nor influenced by such remote and minor things as careless guesswork in a 2nd mortgagee's consent. The Home Owners Loan Corporation made three independent appraisals; it hired a title company to search the records; it hired the closing attorney; it drew all the papers; it might or might not make the loan, depending on the type of house, legal defects or encumbrances, lack of value or

doubtful income of the owner; and very often the loan was for less than the amounts which the mortgagees had consented to take, in which event, the owner was notified that he would be obliged to get the necessary reductions and later report back to the Home Owners Loan Corporation, which, in turn, would arrange for the closing, and at this closing the final and correct adjustments would be made.

There is another fact which belies any reliance on or purpose to influence by the so-called false statements as to the balance due on second mortgages. As a matter of common knowledge second mortgages were so deflated that they had only a nuisance value. It was no longer a question of precise figures as to the exact sums due, but what nominal sum, if any, would be paid to the second mortgagee for the delivery of the satisfaction piece. What was the effect of this well known practice? It destroyed the need for accuracy. Why spend time over old receipts to figure out if the correct balance due on a second mortgage was exactly $874.50 when $100 or so at the most would be available? And this practice did more. It destroyed every possibility that any influence would be exercised on the corporation by any figures as to amount due in the 2nd mortgagee's consents. Whatever these figures, whether correct or incorrect, they were irrelevant and ignored. The only issue was: not what was due or not due, but how little would the corporation pay and how little would the 2nd mortgagee take?

That the figures as to the amount due to a second mortgagee could not be the basis or the source of any "influence" is further established by the final paragraph of the 2nd mortgagee's consent. In this final paragraph, the 2nd mortgagee states what in substance is his agreement, namely, what sum in bonds he will accept for his satisfaction piece (R. 15, 33). *What he will take in bonds is not limited. He is not legally restricted to the exact cash balance due on*

his second mortgage. He might ask for more in bonds because he disliked the low bond interest, or because he feared that the market value of the bonds might drop. Whatever the motivating cause, what sum the 2nd mortgagee would consent to take in bonds was flexible, wholly within his discretion, and, for the practical purpose of influencing action, *this binding contract figure would completely supersede and in effect wipe out any prior guess, correct or incorrect, as to the alleged balance due.*

Besides, the temporary character of the consent limits any purpose to influence to the vanishing point. The consent is a temporary agreement for 30 days, which may be withdrawn after that period on a 10 day notice. As the time required to pass upon the applications invariably exceeded the 30 day period, the 2nd mortgagee's consent was obviously an offer subject to cancellation at any time before closing, and consequently, this, in effect, told the corporation that all figures in the consent in January, for example, would be subject to recall or revision at a closing in June or later, and such notice made such preliminary figures of no earthly consequence or influence. Only at the closing would the corporation actually settle down to consider and pass upon the consents. Before that, everything being subject to recall, everything was tentative and up in the air. (Parenthetically, in neither Count No. 5, nor Count No. 15 was there any allegation that the loan reached the point of closing, was ever considered or was ever made—merely that the consent was filed, R. 13, 31.).

To summarize: no loan was applied for by a second mortgagee and no loan was made on the security of a second mortgagee; a satisfaction piece of the second mortgage was purchased for whatever in bonds the second mortgagee could be persuaded to take; and the loan to the owner was made solely on the security of the property and earning

capacity of the owner, with no practical attention being paid to any second mortgagee's consent.

(2) Even freedom of speech and criticism might be checked and the critic rendered subject to indictment under this section. For example, suppose a critic sharply disagreed with the foreclosure policy of the Home Owners Loan Corporation and its former practice of entering large deficiency judgments; and in making his criticism, suppose he incorrectly stated the number of deficiency judgments which had been entered—the critic could be indicted for knowingly making a false statement for the purpose of influencing in any way the action of the Home Owners Loan Corporation.

(3) It is no answer that indictments would ordinarily not follow such incorrect statements and would only be found when fraud was practiced on the Home Owners Loan Corporation and the security for the loan was materially impaired. Such was the case of *Patrick* v. *United States*, 77 F. (2d) 442, where Patrick obtained a loan from the R. F. C. on fake warehouse receipts by falsely representing that there was wheat in the warehouse when in fact there was none. So in *McLanahan* v. *United States*, 12 F. (2d) 263, under the Federal Farm Land Bank Act, sustaining a somewhat similar section, the particular statement was held relevant and material. Besides, the statement under the Farm Land Bank Act must be made under oath, it must be in writing and it is made by the applicant owner who expects to make an important contract with the lending agency on the basis of the statement. Likewise, in *United States* v. *Kreidler*, 11 Fed. Supp. 402, this section was sustained on the ground that the secret agreement by the first mortgagee to take back a second mortgage was material, violated an important rule of the Corporation and might diminish the owner's ability to pay the Home Owners Loan

Corporation. But these decisions in effect amend this section, and other somewhat similar statutes, by adding the words "material" and "relevant" which were deliberately omitted by Congress. Instead of practically rewriting it, the Court should strike it out and curb the too easy creation of statutory criminals except where there is fraud or material misrepresentation or substantial impairment of the security back of the loan.

(4) The bounds of moderation or reason should not be broken unless urgently required to safeguard the agency or function in question. Of an entirely different act, in *W. B. Worthen* v. *Kavanaugh*, 295 U. S. 56, p. 60, the Court said:

> "Even when the public welfare is invoked as an excuse, these bounds (of moderation or reason) must be respected."

In other statutes, Congress has kept within more reasonable bounds. In the case of Federal Reserve Banks, the false statement must be *material* (Title 12, U. S. C., Secs. 595-6); the Federal Credit Association (Title 12, U. S. C., Sec. 840-6) punishes "any *material* false representation for the purpose of obtaining any loan"; and in the Federal Securities Act, Title 15, U. S. C., Sec. 77q a(2), 78ff, the statement must be "false or misleading with respect to any *material* fact." (*Coplin* v. *United States* (C. C. A. 9th), 88 F. (2d) 652).

(5) The same objections apply to the clause: "Whoever willfully overvalues any security." Besides, if to overstate the amount due on a second mortgage is to "overvalue a security," then the section by making overvaluation a distinct offense has taken it out of the class of false statements and put it in its own separate category. Therefore, if a defendant states a greater amount than is correctly due that would constitute the offense of overvaluation,

and the defendant could be indicted only for that particular crime. Not having been so charged, Counts Nos. 5 and 15 of this indictment, which set out only an overstatement of the balance due or overvaluation, should be dismissed.

C. As to both Section 1467 "a" and "e", not only are they too broad and indefinite, forming dragnets capable of catching whales and minnows, but even if they were clear and limited, they are new regulations, administrative rules, the existence and extent of which nobody knows in advance. For a considerable preliminary period, even lawyers are in a fog, courts in conflict, and the laymen completely bewildered. The rule that ignorance is no defense is surely inapplicable to such a situation. That rule was based on criminal laws which were criminal by common consent and common knowledge. This general certainty and knowledge justified the presumption and the rule. Likewise, the admitted confusion and lack of knowledge on everybody's part today should be the foundation for a fairer and more sensible rule. Already, such a rule is in the making. In the Federal Securities Act, Title 15, U. S. C., Section 78ff, there is this provision:

> "but no person shall be subject to imprisonment within this section for the violation of any rule or regulation *if he proves that he had no knowledge of such rule or regulation.*"

A further advance toward a genuine due process of law is outlined, although not commented upon in *Morehead* v. *N. Y. ex rel. Tipaldo*, 298 U. S. 587, 606:

> "If after the hearing he approves the report, he 'shall make a directory order which shall define minimum fair wage rates,' Section 557. Upon hearing and finding of disobedience the Commissioner may publish the name of an employer as having failed to observe the directory order Section 559. If, after a directory order has been

in effect nine months, the commissioner is of opinion that persistent non-observance is a threat to the maintenance of the prescribed standards, he may after hearing make the order mandatory. Section 560. Violation of a mandatory order is a misdemeanor punishable by fine, imprisonment or both. Sec. 565."

Such a procedure corresponds to the actual facts of today. Any other makes a defendant the sport or victim of chance, and responsible for what it is impossible to know.

POINT IX.

The Home Owners Loan Act in so far as it relates to the Home Owners Loan Corporation and Section 1467 "e" in particular, are invalid as an unlawful delegation of power.

It is hardly necessary to cite authority that the legislative power of Congress cannot be delegated (*U. S.* v. *Shreveport Grain & El. Co.*, 287 U. S. 77, p. 85).

The Home Owners Loan Act delegates to the Federal Home Loan Bank Board the power to create a corporation to be known as the Home Owners Loan Corporation. In this regard it differs from the language of numerous other acts of Congress. In these others Congress creates, it does not delegate. In 12 U. S. C. Sec. 241, "A Federal Reserve Board is hereby created"; 12 U. S. C. Section 1020 "there hereby is established a corporation to be known as the Federal Farm Mortgage Corporation"; in the Federal Farm Loan Board, details as to establishment are set out in 12 U. S. C. Sec. 672, the temporary directors, bonds, officers in Section 673, and organization certificates, Section 674; under Federal Home Loan Bank Act of July 22, 1932, each Bank files original certificate with the Board, which is created by the Act; in 12 U. S. C. Sec. 1724, the Federal Savings and Loan Insurance Corporation "is hereby created", and similar expressions are used in 15 U. S. C. Sec. 601, with reference to the R. F. C., 15 U. S. C. Sec.

331, the War Finance Corporation, and 16 U. S. C. Section 831, the T. V. A.

Nor is that all. When home owners were to be considered in distress was not defined until April, 1934. There is no limitation upon the Board as to method or place of organization of the corporation. The Board is also authorized to regulate the retirement, cancellation of bonds and stock of corporation and reasonable value for purpose of liquidation; likewise, the declaration of dividends as may be earned and proper for the corporation to pay to the United States.

No standard is set for fixing the rate of interest except that it shall not exceed 5% where bonds are used and not over 6% in certain other cases where cash is advanced. There is no minimum.

Now as to Section 1467 "e". Under this section, the corporation is authorized to decide "ordinary charges" not only for examination and perfecting of title and appraisal, but also for "like necessary services". And according as the corporation interprets that phrase strictly or broadly, the field of criminal acts is contracted or broadened. If it decides that Act A is a "like necessary service," the charge is prohibited and the citizen who performs it may land in jail. If on the other hand, it should conclude that Act B is not a "like necessary service", then the citizen who performs it is not a criminal.

Who can predict with any reasonable certainty what acts will be legal and what acts will be illegal under such an elastic standard? Has Congress the right to substitute such guesswork for the definite provisions of a penal statute? We think not. When it authorizes another body to increase or decrease its range of application, pursuant to an extremely general phrase, you have "delegation running riot". And what are "ordinary charges"? By what place,

time or period or average are they to be decided? The usual answer is that such things do not admit of precise measure. And the answer proves that they should not form part of a criminal statute.

Respectfully submitted,

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APPENDIX A.

Statutes.

The provisions of the Home Owners Loan Act, as amended April 1934, which the defendant is charged with having violated are found in Title 12 U. S. C. Section 1467(a) and (e):

(a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this chapter, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(e) No person, partnership, association or corporation, shall, directly or indirectly, solicit, contract for, charge, or receive, or attempt to solicit, contract for, charge, or receive, from any person applying to the Corporation for a loan, (1) any fee, charge, or other consideration, whether bond or cash, except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services, or (2) any moneys, check, note, or other form of obligation, representing payment of any difference which may exist between the market value and the par value of the bonds of the Home Owners Loan corporation. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than two years, or both.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITIONER'S REPLY BRIEF.

POINT I.

New points raised for the first time by the Government: (a) That Counts 5 and 15 may be sustained under Section 35 of the Criminal Code and (b) That judgment on Count 12, to which a plea of guilty was withdrawn is in effect a judgment by consent—cannot be considered; and if considered, must be rejected.

1. *New Points Cannot be Considered.*

While the Government in its brief repeatedly asserts that the petitioner is estopped to make certain claims (p. 59)

and expressly argues that she cannot make a new point—"No such question, we submit, may now be raised" (p. 40), no such restrictions apparently control the Government!

Fortunately, the very cases which the Government cites in support of the right to present new points prove that they are not applicable to a criminal case. In an action involving the validity and infringement of a patent, the defendants might have urged a point as to invalidity, decided against them in the Circuit Court of Appeals, without applying for a cross writ of certiorari (*Stelos Co.* v. *Hosiery Corps,* 295 U. S. 237); in an admiralty suit to limit liability, a ground rejected in the Circuit Court may be urged by respondent to sustain the judgment in the Supreme Court (*Langnes* v. *Green,* 282 U. S. 531); and substantially the same ruling was made in a case involving an order of the *Interstate Commerce Commission* v. *American Ry. Express Co.,* 265 U. S. 475. So in a proceeding under the Anti Trust Law, the respondents could show that the judgment below, although given on untenable grounds, is right and should be affirmed. *Farmers Guide Co.* v. *Prairie Co.,* 293 U. S. 268.

Besides, in other cases, cited in the Government's brief, more nearly resembling the situation in this appeal, this Court has refused to consider points not considered in the courts below. In *Zellerbach Co.* v. *Helvering,* 293 U. S. 172, p. 182, the Court said:

> "No such point was considered by the Court below, nor was it suggested either in the petition for certiorari or in any response thereto. Review by this Court will be limited accordingly".

The same policy was pursued in *Lynch* v. *U. S.,* 292 U. S. 571, 588. The alleged defect that the suit was not brought within the period allowed by law was not reviewed because it was not pleaded nor brought to the attention of the courts

below nor by the solicitor general to the attention of the Supreme Court when opposing the petition for a writ of certiorari. And in *Burnet* v. *Commonwealth Improvement Co.*, 287 U. S. 415, where the Board of Tax Appeals expressed no opinion as to the Commissioner's method of reckoning, and where the respondent relied entirely on another point, on which alone the Circuit Court ruled, the Supreme Court would not undertake to determine what was not considered below.

This restriction on the review of new points has been equally applied to defendants. In *Rosenthal* v. *N. Y.*, 226 U. S. 260, 272, when the defendant tried to invoke for the first time the prohibitions against *ex-post facto* laws, the Court replied:

> "It is sufficient to say that no such point appears to have been raised in the Court below, although it might have been raised by an application for rehearing. Nor is any such point covered by the assignments of error in this Court."

The Government attempts to get over the hurdle of these cases. But its attempt is not successful. If the penal sections are declared invalid, it argues, there will be no new trial under these invalid penal sections. That is obvious. And equally obvious is the fact that, if the Government's contention be true that the petitioner has violated Section 35 of the Criminal Code, she may be indicted for the violation of that separate and distinct section. That a grand jury may refuse to indict does not change the orderly character of such a procedure under which a defendant is told what to expect and what he must defend, and under which no new rabbits may be unexpectedly pulled out of the hat at the very end of the journey.

2. *Counts 5 and 15 May Not be Sustained under Section 35 of the Criminal Code Because it Differs Materially from Section 1467 (a) of the Home Owners' Loan Act.*

On page 28, the Government's brief cites a number of cases to the effect that the endorsement on the margin of the indictment constitutes no part of the indictment, does not add to or weaken the legal force of its averments, and if it properly charges an offense under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offense charged was covered by a different statute.

But the substance of the ruling in these cases is that where the facts alleged show a violation of several sections and the indictment does not specify the section under which it is drawn—except possibly by indorsement on the margin or caption—then the indictment, particularly on demurrer, will be upheld if there is any statute which can sustain it.

In our case, the very language of Section 1467 (a) of the Home Owners' Loan Act, as to false statements, is followed in Counts 5 and 15 of the indictment; the very act as amended in April 27, 1934 is mentioned; and at the end the precise title and section of the United States Code is set forth. Clearly, where a specific statute is so definitely earmarked, no other statute can be substituted in its place.

And consider the palpable injustice which would be done to the petitioner if Count 15 were to be sustained under Section 35 of the Criminal Code. Before its amendment in 1934, intent to cheat, swindle or defraud the United States or any Corporation in which the United States was a stockholder was an essential element of the charge under Section 35 of the Criminal Code. In Count 15, under Section 1467 (a) of the Home Owners' Loan Act, there is no such allegation and no such provision in the section itself. Nor is that all. Under Counts 6 and 16 of the indictment, Sec-

tion 338, Title 18, U. S. C. the petitioner was charged with attempting to use the mail and the false statements to defraud the H. O. L. C. and the homeowners. While the mailing was proven, both these counts charging fraud were dismissed by the Government on its own motion at the end of its case. *In short, the evidence proved that the petitioner was not a cheat and a fraud and that she had not made the false statements to swindle anybody.*

She may still have made the incorrect or false statements to influence the action of the Home Owners Loan Corporation, but there was no intent to cheat and defraud. That decisive fact has been established by a full trial. After the Government by its own motion to dismiss counts 6 and 16 has conceded that the petitioner did not make either statement with a fraudulent purpose, it would certainly be a denial of every concept of a fair trial to permit it to shift her conviction to a statute branding the petitioner as a cheat, a swindler and a fraud. Surely, even the Government should be estopped from perpetrating such a wrong.

The Government endeavors to justify its course by saying that the misstatement might inflate the loan and default be made more likely (Br. 31). Such an argument overlooks completely the practical conduct of the business of appraisal by the Home Owners' Loan Corporation. The precise amount to be given a second mortgagee played no part in its appraisal or loan. Other independent factors determined that issue completely.

And while Sec. 35 of the Criminal Code was amended in 1934 by omitting the phrase as to cheating, swindling and defrauding, that would not sustain Count 5, also based on another misstatement by the petitioner as to the amount due on a second mortgage. There is no allegation about the purpose to influence the action of the Home Owners' Loan Corporation in Section 35 of the Criminal Code. And in

Count 5, there is no allegation that it involves a matter within the jurisdiction of the Home Owners' Loan Corporation. If indicted under Section 35 of the Criminal Code, the defendant could challenge the jurisdiction. And there is no allegation in Count 5, that the U. S. is a stockholder of any corporation. Only by omitting essential allegations of Count 5, as to purpose, and by rewriting a new count with several of the essential allegations contained in Section 35 of the Criminal Code, could you reshape the present indictment under this new section.

And if this impossible feat could be performed, the history and meaning of Section 35 of the Criminal Code, despite the amendment, indicate that it deals with matters requiring a pecuniary loss, which sharply differentiates it from the section of the Home Owners' Loan Act.

3. *Since the Government Did Not Object to Withdrawal of Plea of Guilty as to Count 12, it is Now Estopped, and Besides for Appeal Purposes a Plea of Guilty is the Equivalent of a Verdict by a Jury.*

The wisdom of not permitting the Government to spring new points in this Court is again convincingly established in the matter of the withdrawal of the plea of guilty as to Count 12. As the Government did not object, the record naturally does not disclose the circumstances justifying the withdrawal, the comment of the judge that the defendant was not at fault, and that the lapse of time was due to the court's own action in adjourning the sentence beyond the ten day period. The Government acquiesced in the Court's decision, proceeded to trial, obtained a conviction and it should be absolutely estopped from reversing its own conduct and acting as if there had been no trial.

The cases mentioned by the Government do not sustain its claim that the ten day rule as to the withdrawal of pleas of guilty is mandatory under all circumstances. *Ex parte*

Jordan, 94 U. S. 248, relates to the allowance of an appeal. "Shall be allowed" means "must be allowed". *Escoe* v. *Zerbst*, 295 U. S. 490, construed the phrase—"probationer shall forthwith be taken before the Court", and decided that he could not be deprived of this privilege.

Besides, the Government confuses a plea of guilty with an ordinary consent judgment in a civil action. A plea of guilty does not prevent the defendant from assailing the indictment. The courts have repeatedly held that a defendant, after a plea of guilty, is in the same position in respect to matters reviewable by appeal as though he had been found guilty by verdict of a jury. *Kachnic* v. *U. S.*, 53 F. (2d) 312, 315; *Roberto* v. *U. S.*, 60 F. (2d) 774, 775; *Spirou* v. *U. S.*, 24 F. (2d) (C. C. A. 2nd) 796, 797. And by implication, while the point was not argued, the same procedure was followed in *Rosenthal* v. *N. Y.*, 226 U. S. 260. This Court considered the constitutional points which the defendant presented, with the exception of a new point raised for the first time, although the defendant had pleaded guilty. The principle established by these criminal cases clearly differentiate the three civil cases cited by the Government, *Nashville, etc., R. R.* v. *U. S.*, 113 U. S. 261, 266; *U. S.* v. *Babbitt*, 104 U. S. 767, 768; and *Pacific R. R.* v. *Ketchum*, 101 U. S. 289, 295. In substance, they hold that a decree in equity which appears to have been rendered by consent is affirmed, without considering the merits, and that no errors would be considered which were in law waived by such consent.

Nor does the criminal case of *U. S.* v. *Berman*, 88 F. (2d) 645, help the Government's claim. The defendant requested, after conviction and after the suspension of sentence, that a fine of $1.00 be imposed, and the Appellate Court decided that he could not complain of the part of the judgment which he not only consented to, but actually asked for.

Finally, the undisputed facts proven at the trial show that the petitioner is not guilty of any crime whatsoever under Count 12. If there is any reversible error in this record it is the conviction under this Count. The contract made to adjust payments on the first and second mortgage, the services rendered, the payment of the $50.00 to the first mortgagee and the withdrawal of the petitioner from the transaction on June 11, 1934, are established by the testimony of the homeowner. At that time, the homeowner was not even an applicant for a home loan. At the end of the month—after the petitioner had done what she could and had withdrawn because she could not negotiate successfully for any modification with the first mortgagee—the homeowner filed her application for a loan. Where is the crime? Where is the violation of any law? Should not the Government itself, where the innocence of a defendant is conclusively demonstrated, at least as to this count, be the first to move for its dismissal rather than to twist a conviction out of it at all hazard?

Point II.

The two penal sections of the Home Owners' Loan Act cannot stand, if general act falls, and the petitioner may attack the general provisions and is not estopped by any act of hers from attacking them.

1. *Penal Sections Not Separable, if Main Act Invalid.*

The Government attempts valiantly, but unsuccessfully it seems to the petitioner, to prove that even though the tree falls, the branches may still rest separately in the air, unsupported by the main trunk. It mentions the separability clause. But that says in effect, that a branch or clause, if invalid, may be lopped from the valid trunk. It does not

say that you may start to segregate an act into a variety of parts regardless of the validity of its main system.

That other statutes may be passed separately to punish an attempt or a conspiracy to defraud the United States or to cause corrupt administration of certain acts of Congress is conceded. And an indictment under such separate sections of the Criminal Code may be valid regardless of the validity of the particular agency involved. That in substance is a summary of the rulings in the cases cited by the Government. *U. S.* v. *Schor*, 13 F. S. 399; *U. S.* v. *Harding*, 81 F. (2d) 503; *Madden* v. *U. S.*, 80 F. (2d) 672; *Langer* v. *U. S.*, 76 F. (2d) 817; *U. S.* v. *Solder*, 10 F. S. 944; *U. S.* v. *McDonald*, 10 F. S. 948.

The existence of these separate statutes against defrauding the United States or any agency or corporation in which it is a stockholder, instead of buttressing the Government's argument of separability, negatives its claim. Knowing the existence of the separate statutes to protect the funds of the United States, Congress relied, it could be argued, on these separate statutes, which it knew would stand regardless of the legal fate of the particular agency or corporation. And in addition to these independent statutes, standing apart on their own feet, it included the special penal sections in the Home Owners' Loan Act, and by their very inclusion indicated that these special penal sections were to be coupled with the main act.

Admittedly, Congress would not have passed the two penal sections without the general provisions of the Act. If no H. O. L. C. had been created, there would have been no Section 1467 (a) as to false statements, and no Section 1467 (e) as to charges. Speculation as to what Congress might have intended after the passage of the Act is a novel suggestion on the part of the Government, but it leads into

a bog where one flounders without any hope of establishing any definite footing.

Besides the admitted intention of Congress before the passage, the separability argument does not pass the second test, namely, that the penal sections cannot stand and be enforced apart from the Main Act. If there is no valid Home Owners' Loan Corporation to be influenced and no valid corporation to which applicants may go for loans, the two penal sections, in so far as they prohibit the influencing the action of this Corporation and the charging for services to applicants for loans of this corporation, are without meaning.

2. *As Main Provisions Affect the Petitioner, She May Contest Their Validity.*

The Government's concentration on its array of cases (Br. 57-59) apparently has made it overlook this simple fact. The petitioner does not dispute that: under the Railway Labor Act, the railroad can complain only of the infringement of its own constitutional immunity, not that of the employees; that under Workmen's Compensation Act, the employer cannot urge a wrong to the employee; an owner of automobiles moving in caravans whose business is properly taxed cannot complain of the imposition of the tax on a business which he does not do; companies receiving just compensation are not entitled to have higher rates merely because of the plight of less fortunate competitors; petitioner who has been excepted from a setback ordinance cannot complain of its vagueness; taxpayer paying a stamp tax on exclusively local transactions cannot allege interference with interstate commerce; residents of District of Columbia cannot attack tax on the ground that it is invalid as to non-residents; objections to penalties cannot be raised in a suit not to enforce penalties; and

generally that one who would strike down a statute must show that he is within the class of persons with respect to whom the act is unconstitutional and that the alleged invalid feature injures him. *Virginian Ry.* v. *Federation*, 300 U. S. 515, 558; *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Morf* v. *Bingaman*, 298 U. S. 407, 413; *Ætna Ins. Co.* v. *Hyde*, 275 U. S. 440, 446; *Gorieb* v. *Fox*, 274 U. S. 603; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Heald* v. *District of Columbia*, 259 U. S. 114; *Rail Coal Co.* v. *Ohio Industrial Commission*, 236 U. S. 338, 350.

While that is not a complete summary, it gives the chief samples cited by the Government. No argument is needed to point the difference. The petitioner is not advancing some special discrimination nor some particular immunity belonging only to a certain group nor some restricted defect. As to the general provisions of the Act, her attack is fundamental and sweeping in its scope. She claims that Congress has no power to create a corporation to conduct a private enterprise, that such an enterprise invades the local rights reserved to the people and the powers reserved to the states, and cannot be supported under the taxing-for-the-general-welfare clause.

Such an attack is available to anybody affected by the Act. The answer of the Government that only the penal sections touch the petitioner is inadequate. If the penal sections, although valid in themselves, should fall because of the invalidity of the Main Act, it is the invalidity of the Main Act which will free the petitioner from the liability of going to jail for one year and a day.

3. *Petitioner Not Estopped from Challenging Main Act.*

Again, the Government (Br. 60-63) bases its claim of estopped on a series of cases which have nothing whatever to do with this appeal. There is no argument possible over

cases which hold that: a company commencing a statutory proceeding for the appraisal of their stock, which is still pending, waived its right to assail the validity of the statute; an employer who voluntarily elects to come under a state Workmen's Compensation Act and accepts its benefits, cannot assail its burdens as unconstitutional; obligors on bond, staying execution, are estopped to assert invalidity of statute in subsequent litigation; plaintiff who had connected its premises to sewer cannot contest the validity of the sewer or the validity of the tax; and that it is true that one cannot in the same proceeding both assail a statute and rely upon it nor can one who avails himself of the benefits conferred by a statute deny its validity. *Wall* v. *Parrott, Silver & Copper Co.*, 244 U. S. 407, 411; *Booth Fisheries* v. *Industrial Commission*, 271 U. S. 208, 211; *Daniels* v. *Tearney*, 102 U. S. 415, 421; *St. Louis Co.* v. *Prendergast Co.*, 260 U. S. 409, 473; *Eliason* v. *Wilborn*, 281 U. S. 457.

That partial list of cited cases carry on their face their distinguishing marks. The petitioner is not a homeowner who applies for a loan under the Act. She was in two instances a second mortgagee and usually a mortgage broker. As second mortgagee in two cases, upon request of the H. O. L. C., she offered to release her second mortgage, in short to sell a satisfaction piece for a certain amount in bonds. The relation of buyer and seller in an ordinary business transaction between a corporation and an individual is not the availing of a benefit under a statute. In order to assert that a statute provides a benefit for a person he must be included within the circle of beneficiaries who may apply for its expected benefits. The only one who can apply is a certain group of homeowners. They are the only legal beneficiaries with whom the statute is concerned. That in making the loan to the homeowner, the H. O. L. C. sometimes had to do business with second

mortgagees and bought certain papers from them does not make them the recipients of benefits under that statute.

And in criminal cases the principle of estoppel, based at best on a shadowy claim of benefits, should be applied with the utmost strictness. The very cases cited by the Government to prove that estoppel is recognized in criminal cases reveal how limited is the recognition. In the first place, several of the alleged criminal cases, are not criminal at all. In *State* v. *Board of Police Commissioners,* 56 N. J. L. 258, the Court ruled that in ouster proceedings, a police commissioner could not attack law creating the board under which he served. *Ayers* v. *Newark,* 49 N. J. L. 170, was a similar proceeding and upheld the same rule. And in the second place, cases like *State* v. *Collins,* 225 Mo. 633, and *Hunt* v. *State,* 186 Ind. 644, merely establish the sensible principle that if a prisoner accepts the terms of parole, he cannot, when it is revoked, assail its validity.

The tendency to restrict is evident in *State* v. *Stone,* 46 La. Ann. 147, 150. Since the defendant had voluntarily given samples of milk, he could not object to the introduction of proof by the chemist. But the Court added that consent to a test did not make legal what may be illegal in the ordinance under which the proceedings were instituted and the fine imposed. And *Kluczek* v. *State,* 115 N. J. L. 105, holds that objection to jurisdiction over the person is waived by taking part in a trial on the merits.

The two cases of *Ingles* v. *People,* 90 Colo. 51, 56, and *Jannett* v. *Windham,* 109 Fla. 129, 130, cover a very narrow field. The first holds that if a defendant complies with the statute as to an insanity plea, and enters the plea as required, without objection, he cannot later contest its validity. The *Jannett* case, which upheld the validity of the statute on rehearing, is of doubtful correctness since it seemed to hold at first that a lender could not challenge a provision requir-

ing a license because the statute conferred a benefit in the form of an exemption from the usury laws.

Nor do all proceedings under a statute constitute an estoppel even in civil cases. In *Newark* v. *Central R. R.*, 267 U. S. 377, 385, the Company applied to board for the approval of its plans for a proposed bridge. When its application was denied, it was free to insist that such approval was not required. No element of estoppel was found in *Buck* v. *Kuykendall*, 267 U. S. 307, 317, where a bus owner applied for a certificate of convenience, which was denied. The Government attempts to distinguish these cases by arguing that a license is not a benefit. And if that be so, a sale that never takes place is hardly a very substantial advantage.

In conclusion, the petitioner as mortgage broker was not employed by the Home Owners Loan Corporation. She was hired by homeowners to represent them in dealing with various mortgagees; she continued her ordinary mortgage activities exactly as before; and in two instances, at the request of the corporation, offered to sell two satisfaction pieces to the corporation, offers which were never accepted. Under these circumstances, there can be no estoppel on the theory of benefit or availing oneself of the provisions of the statute.

Point III.

That the Government can protect against fraud and exploitation does not justify the same wide and general protective devices and punishments where fraud and exploitation do not exist.

That the United States may protect its funds and its beneficiaries or wards from exploitation is admitted. Where there is a real danger, it may spread a wide net. In bonus cases, in war risk insurance cases, wherever the Government provided a fund and the beneficiary received a substantial sum in cash, the very existence of this money

tempted greedy and clutching hands. In such cases, the protective net had to be wide, high and very tight.

The justification for treating people as criminals who violated these regulations arose from the obvious danger to the funds. But making the violation of administrative regulations a criminal act is a very serious business. Where the peril is very faint or practically non-existent, Congress cannot invade a broad field of private activity and transform overnight what was legal into a criminal act. It cannot because such criminal making power is not reasonably necessary to protect its funds or the Home Owners Loan Corporation.

This distinction can be made clearer by comparing the ordinary bonus case. There the beneficiary is entitled to receive a sum in cash. The procedure to obtain the benefit in cash is usually very simple, and would not justify a substantial fee. Still, the existence of the money may induce the agent or attorney to overcharge. Congress to protect its wards limits the permissible charge. It deals with the beneficiary as the recipient of a fund of money which may be in serious danger. Now compare the homeowner who applies to the Home Owners Loan Corporation. There is no money distributed to the homeowner. The H. O. L. C. pays off existing encumbrances. Consequently, since the homeowner does not receive any cash whatsoever, the danger of exploitation is eliminated. As to the usual services of appraisal, title search, closing of title, the persons are all employed and paid by the Corporation.

With no money paid to the homeowner and all persons performing all of the usual services employed and paid by the Corporation, the possibility of exploitation was completely removed. By these practices, the Corporation effectively protected itself and the homeowner. Not a penny of its money was used except to pay persons employed by it,

whose fees it fixed, or to pay existing liens or to pay persons who did repair work which it approved.

The only remaining field was that of the mortgage broker hired to reduce first and second mortgages or to obtain modifications of terms or stay of foreclosures. Since the Home Owners Loan Act did not stay foreclosures nor automatically modify the terms nor reduce the amounts of mortgages, this was a field in which the owner was free to hire whom he pleased. The broker so hired was not paid by the H. O. L. C., nor with any funds of the United States. The homeowner did not receive a penny for any such purpose or for any purpose. The broker so hired could get paid only by performing some benefit to the owner. For example, the broker, as the petitioner did, brought about a reduction in the amount of the mortgages and in those cases she became entitled to receive compensation from the owner. Some tangible assistance, some lightening of the owner's burden, had to be obtained before the owner in distress would be able to pay the broker. To make such acts, not of exploitation, but of considerable benefit to the homeowner, a crime, we submit, is beyond the power of Congress.

This is equally true of Section 1467 (a) as to false statements. Where the danger to the funds of the United States or the lending Corporation is considerable, the penalty arm should be ready to strike hard. But where there is no fraud, as admittedly there was none here, where there is no loss and no impairment of the security, where the loan does not depend on any statement in any second mortgagee's consent and where in practice all such guesses are adjusted at the closing, what you are confronted with under both sections is not a criminal matter at all, but a matter of administrative regulations.

In such situations, the rule *de minimis non curat lex*—which the Government says is not followed in criminal

cases—should be followed to avoid the making of criminals for trifling reasons. That the overstatement of the balance due in percentages is large does not alter this principle. It was a common practice to guess at the balance due on 2nd mortgages, to guess at the amount due for interest, for taxes, and to be on the safe side, the easy thing to do was to put down either the original amount of the mortgage or some large sum, and then to figure out exactly when the receipts were produced by the owner at the closing, if it ever reached that point. It was at that time, that the matter was taken seriously, and it is from that time only that everybody concerned should be held to strict account. And if the Corporation wanted second mortgagees to be more accurate before that time, it should have issued a warning that any inaccuracy in figures might subject the maker to prosecution.

Without some such clear and definite warning to second mortgagees under Section 1467 (a) and to brokers under Section 1467 (e) no person should be treated as a criminal for a violation which has resulted in no loss to anyone.

As to the claim of vagueness, concerning Section 1467 (e), the Government has pointed out that one count refers to an act before its amendment in April, 1934. That is true. But the count itself refers to the section as amended. And because of that we have so considered this section. However, to avoid any misunderstanding, the petitioner contends that the section is equally invalid before amendment in April, 1934, and after the amendment, and for the same reasons.

Point IV.

Since the H. O. L. C. has already foreclosed or started foreclosure in 15% to 20% of its loans, it can hardly be treated as an agency for the "Protection of Home Ownership" or of "Charity", and a private enterprise does not cease being private because it produces some benefits.

There are scattered through the Governments brief phrases, such as "the protection of home ownership", "preserving its citizens from eviction from their homes", "the relief of more than a million distressed home owners", and when such phrases are repeated they are almost self intoxicating. From the Government's account of the H. O. L. C., one would get the impression, to apply a statement of Prof. Robinson, used in another connection ("The Folklore of Capitalism" by Prof. Arnold, p. 143) that if there had been no such corporation "the people would have climbed trees and thrown coconuts at each other."

The petitioner does not wish to belittle the H. O. L. C. She admits that it is better for a home owner to pay 5% rather than 6%, and probably better to have a long term contract rather than a short term. But the Corporation as a legal entity must be judged by what it is empowered by law to do and what it does under the law. Nowhere, for example, is the dread phrase "foreclosure by the H. O. L. C." mentioned in the Government's brief. Why this conspiracy of silence? Is it not a well known fact, published by the H. O. L. C. itself, that it has foreclosed or started to foreclose between 15% to 20% of its loans? It has entered deficiency judgments exactly as other mortgagees have done. And how many more foreclosures it will carry through—whether a majority or more—nobody can tell.

Nor is that all. It is a serious question whether the fumbling and the blunders necessarily made in the organiz-

ing and administering in a hurry any such large organization do not offset most of the benefits it may have conferred. For without it, the local institutions and the states would have acted and their judgment both as to appraisals, renewals and foreclosures probably would have been wiser than those made by agents suddenly catapulted by chance into office. Perhaps there might have been a few more foreclosures, but even that is speculative, and besides it is a doubtful policy to prolong the agony when foreclosure is inevitable, and often this may result in the shifting of ownership to other individuals equally deserving and possibly more enterprising.

And if the balance of benefits should be a bit more on the side of the Corporation than the petitioner believes, that would not change its essential private character. Every large private enterprise, every large private bank, every large motor Company, for instance, stabilizes employment, and by the wages of its thousands of employees keeps up rental values, promotes home ownership, and might be labelled adjuncts of this and that system. Still, they would be private enterprises, and no matter how wide their circle of benefits, their character would not be changed. A big private enterprise is just as much a private enterprise as a small one.

Until that private enterprise is endowed with public functions as in the *Farm Land Bank* case (*Smith* v. *Kansas City Title Co.*, 255 U. S. 180) it is just a private business of loaning money on private homes at 5%. The absence of public powers is not "too rudimentary a touchstone" (Br. 85); their absence means that power has not been conferred and until such power is conferred, the corporation cannot be treated as if they had been granted. And absence of power cannot be waived because the private institution is of benefit to the National banking system nor because our whole financial system is "One which is closely and deli-

cately integrated'' (Br. 88). Public power, not granted, or which does not exist, cannot be created by analogies nor by circles of influence, nor even by the assumed dire necessity for the creation of such a public agency.

The petitioner stands corrected as to the date the Corporation was authorized to purchase bonds of the Home Loan Bank. It was in April 27, 1934, and not in 1935. However, that was merely what any other bank or mortgage company could do. It was not required nor directed to do so as in the *Farm Land Bank* case. It was never declared a fiscal agent or depositary of the United States and therefor it is not the creature of the fiscal powers of Congress.

The basic confusion in the Government's argument is that there is no violation of the 9th and 10th Amendments because the corporation constitutes ''charity and not duress'' (Br. 102). If the H. O. L. C. loaning on first mortgages at 5% is ''charity'', what is the Governments definition of a business contract? Petitioner admits that the contract is voluntary. Her contention is not based on coercion, but on the invasion of a field of private activity—that of loaning money to private individuals on their private homes—and that this field cannot be invaded or entered by the Federal Government under the guise of ''general welfare''.

Nor is it an answer to say that if the United States is exercising the general welfare power it cannot be violating the 9th and 10th Amendments. That would be true if the general welfare clause were an omnibus clause without limits and under which the Federal Government could conduct any large private business in the country. It is at this point that we divide. Petitioner does not believe that the general welfare clause can be construed as a general power to incorporate any large business enterprise to take over or to invade a field of admittedly private activity. Unless there exists some such demarcation, there is no limit to

Federal activity and there is no meaning left in the words of the 9th and 10th Amendments and we have not a Federal system but a rapidly emerging totalitarian one.

Conclusion.

For the foregoing reasons, together with those in the original brief, we respectfully submit that the judgment of the courts below should be reversed.

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 991

GERTRUDE KAY, ALIAS GERTRUDE KLEIN, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 595–599) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered April 12, 1937 (R. 600). The petition for a writ of certiorari was filed on May 14, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Rule XI of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

While the petitioner seeks to present seven questions, it is believed that the determination of two questions will be dispositive of this case:

1. Whether the court below properly refused to consider the petitioner's bill of exceptions on the ground that the same was not settled and filed within the time required by Rule IX of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

2. Whether the indictment charging the petitioner with certain violations of Section 1467 (a) and (e) of the Home Owners' Loan Act sufficiently charged offenses against the United States, or whether, as the petitioner contends, the Home Owners' Loan Act is unconstitutional and consequently no crimes were charged by the indictment.

STATUTES INVOLVED

The Home Owners' Loan Act of June 13, 1933, c. 64, Section 8, 48 Stat. 134, as amended April 27, 1934, c. 168, Section 12, 48 Stat. 647 (U. S. C., Title 12, Section 1467 (a) and (e)) insofar as material reads as follows:

> SEC. 1467 (a). Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this

chapter, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

* * * * *

SEC. 1467 (e). No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive any fee, charge, or other consideration from any person applying to the Corporation for a loan, whether bond or cash except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years, or both.[1]

---

[1] Section 8 (e) as originally enacted June 13, 1933, 48 Stat. 135, was as follows, the parts in italics being omitted from the Amendatory Acts:

> No person, partnership, association, or corporation shall make any charge *in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act* except ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfecting of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years, or both.

STATEMENT

Petitioner was tried in the United States District Court for the Eastern District of New York on an indictment (R. 7–50) consisting of twenty-five counts. The judgment and sentence do not appear in the record but by reference to the "criminal docket" (R. 6) it appears that the petitioner was convicted on eight counts and was sentenced on each of seven counts to be imprisoned for a term of one year and one day, the sentences to run concurrently. Sentence on count 8 was suspended, and the petitioner was placed on probation for two years (R. 6). In counts 5 and 15 (R. 13, 31) the charge was that petitioner overstated the amounts due on mortgages upon the properties of applicants for loans for the purpose of influencing the action of the Home Owners' Loan Corporation. In counts 8, 14, 20, and 24 (R. 21, 30, 42, 48), the offense charged was that the petitioner contracted to receive fees other than those authorized or required by the Home Owners' Loan Corporation. In the remaining counts 12 and 25 (R. 27, 49) the petitioner was charged with unlawfully receiving unauthorized fees. Sentence was imposed May 29, 1936 (R. 6). Notice of appeal and assignments of error were filed June 1, 1936 (R. 535). An order extending the time in which to file a bill of exceptions was granted by the trial court June 30, 1936 (R. 6), which evidently extended such period to August 18, 1936. The bill of exceptions,

however, was not settled and filed until October —, 1936 (R. 532). The docket entries (R. 6) show that successive orders further extending the time to file the bill of exceptions were made August 18, 1936, September 8, 1936, and September 25, 1936. There also appears in the record (R. 534) an order dated October 13, 1936, extending the time for filing the bill of exceptions to October 19, 1936. Some or all of such orders were made by consent or stipulation of counsel and none was opposed by the Government (R. 533–534). The Circuit Court of Appeals refused to consider the bill of exceptions because not filed within the time required by Rule IX of the Rules of Practice and Procedure in Criminal Cases promulgated by this Court May 7, 1934, and considered only the sufficiency of the indictment and the judgment of the lower court. The judgment of conviction was unanimously affirmed (R. 599–600).

ARGUMENT

I

Petitioner contends that the court below erred in refusing to consider her bill of exceptions. The order of June 30, 1936 (R. 6), was the only timely order extending the bill of exceptions, the orders of August 18, 1936, September 8, 1936, September 25, 1936, and October 13, 1936, all having been made after the thirty-day limit prescribed by Rule IX

had expired. As the court below observes (R. 595):

> Though this order [order of June 30, 1936] is not included in the record, it is clear from later orders which purported to further prolong the period of extension that the bill of exceptions was not filed within the time specified by the order of June 30, and the appellant does not contend otherwise. The bill of exceptions was not settled and filed until October 1936.

No application was made to the Circuit Court of Appeals to modify or amend the order of June 30, 1936. That order exhausted the power of the District Court. *Ray* v. *United States* (No. 604, October Term, 1936), decided by this Court April 26, 1937. Under the reasoning of this Court in the *Ray* case, in the absence of timely application invoking the sound discretion of the Circuit Court of Appeals to amend or modify that order, there was and could be no bill of exceptions for consideration by the Circuit Court of Appeals.

II

Petitioner contends that the sections of the Home Owners' Loan Act under which she was convicted are unconstitutional. The record filed in this Court does not disclose any objection to the indictment by way of demurrer, motion to quash, or plea in abatement. So far as the record proper discloses, the first objection to the constitutionality of the statute under which the petitioner was con-

victed was raised by amended assignments of error 1–3 (R. 539). It will also be noted from the averments of the indictment that the petitioner availed herself of the provisions of the statute which she now assails as unconstitutional. That is, she invoked the statute for purposes of profit to her business and yet seeks now to reject its penal provisions as unconstitutional. Under such circumstances it would seem that the constitutional questions sought to be raised do not merit serious consideration. Cf. *Wall* v. *Parrot Silver and Copper Co.*, 244 U. S. 407, 411–412; *St. Louis Casting Co.* v. *Prendergast Construction Co.*, 260 U. S. 469. But in any event we submit that the opinion below sufficiently disposes of the questions of constitutionality presented by the petitioner (R. 596–599).

It will be noted from the terms of the Act, U. S. C., Title 12, Section 1463 (d), that the principal activities of the Corporation in refinancing bonds, mortgages, and contracts of home owners were limited to a period of three years after June 13, 1933. The present function of the Home Owners' Loan Corporation is, therefore, limited to protecting and liquidating its investment of funds. In other words, the Home Owners' Loan Corporation having served its purpose during the financial depression, its future existence is merely for the purpose of liquidating its assets and liabilities. Except as applied to the instant case, the determination of the constitutionality of the penal

provisions of this Act involves questions of no general importance.

CONCLUSION

Petitioner had a fair trial and a careful review in the court below of the questions here presented. As the case does not present any question of present general importance and does not involve any conflict of decisions, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MAY 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 61

GERTRUDE KAY, ALIAS GERTRUDE KLEIN, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the trial court. The opinion of the Circuit Court of Appeals (R. 595–599) is reported in 89 F. (2d) 19.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 12, 1937. The petition for writ of certiorari was filed May 14, 1937, and was granted June 1, 1937 (R. 601). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals was correct in holding that it was foreclosed from considering the alleged errors arising upon the bill of exceptions because the bill was not timely settled.

2. Whether the conviction should be affirmed either (a) because it may be sustained under Section 35 of the Criminal Code, or (b) because a plea of guilty was withdrawn too late.[1]

3. Whether Section 8 (e) of the Home Owners' Loan Act as originally enacted on June 13, 1933, and as subsequently amended is constitutional, and whether Section 8 (a) of that Act is constitutional.

4. Whether petitioner can challenge the general provisions of the Home Owners' Loan Act.

5. Whether the Home Owners' Loan Corporation is constitutional.

STATUTES AND RULES INVOLVED[2]

The Home Owners' Loan Act of June 13, 1933, c. 64, 48 Stat. 134 (U. S. C., Title 12, Section 1467 (a) and (e)) provides in part:

> SEC. 8. (a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the

[1] These questions are not raised in the petition but are advanced in support of the judgment below.

[2] The relevant portions of the Home Owners' Loan Act of 1933, as amended to date, are printed in the Appendix, pages 104–120, *infra*.

Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

* * * * *

(e) No person, partnership, association, or corporation shall make any charge in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act except ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfecting of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years, or both.

Section 8 (e) of the Home Owners' Loan Act, as amended by Act of April 27, 1934, c. 168, Sec. 12, 48 Stat. 643, 647, reads:

No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive any fee, charge, or other consideration

from any person applying to the Corporation for a loan, whether bond or cash except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years or both.

Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, Sec. 80), provides in part as follows (matters eliminated by the Act of June 18, 1934, are contained in brackets; additions are indicated by italics):

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever [, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating

and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder,] shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, *in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder* shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

Rule II, Par. (4), of the Criminal Appeals Rules provides:

> A motion to withdraw a plea of guilty shall be made within ten (10) days after entry of such plea and before sentence is imposed.

Rule IV of the Criminal Appeals Rules provides:

> *Control by Appellate Court.*—The clerk of the trial court shall immediately forward the duplicate notice of appeal to the clerk of the appellate court, together with a statement from the docket entries in the case substantially as provided in the form hereto annexed.

From the time of the filing with its clerk of the duplicate notice of appeal, the appellate court shall, subject to these rules, have supervision and control of the proceedings on the appeal, including the proceedings relating to the preparation of the record on appeal.

The appellate court may at any time, upon five (5) days' notice, entertain a motion to dismiss the appeal, or for directions to the trial court, or to vacate or modify any order made by the trial court or by any judge in relation to the prosecution of the appeal, including any order for the granting of bail.

Rule IX of the Criminal Appeals Rules provides:

Bill of Exceptions.—In cases other than those described in Rule VIII, the appellant, within thirty (30) days after the taking of the appeal, or within such further time as within said period of thirty days may be fixed by the trial judge, shall procure to be settled, and shall file with the clerk of the court in which the case was tried, a bill of exceptions setting forth the proceedings upon which the appellant wishes to rely in addition to those shown by the clerk's record as described in Rule VIII. Within the same time, the appellant shall file with the clerk of the trial court an assignment of the errors of which appellant complains. The bill of exceptions shall be settled by the trial judge as promptly as possible, and he shall give no extension of time that is not required in the interest of justice.

Bills of exceptions shall conform to the provisions of Rule 8 of the Rules of the Supreme Court of the United States.

Upon the filing of the bill of exceptions and assignment of errors, the clerk of the trial court shall forthwith transmit them, together with such matters of record as are pertinent to the appeal, with his certificate, to the clerk of the appellate court, and the papers so forwarded shall constitute the record on appeal.

The appellate court may at any time, on five (5) days' notice, entertain a motion by either party for the correction, amplification, or reduction of the record filed with the appellate court and may issue such directions to the trial court, or trial judge, in relation thereto, as may be appropriate.

STATEMENT

The petitioner was convicted in the District Court of the United States for the Eastern District of New York under eight counts of an indictment charging separate violations of the Home Owners' Loan Act (R. 6).

Counts 5 and 15 charged that petitioner as second mortgagee had liens on the properties of one Terrone and one Wilson who were applicants for loans from the Home Owners' Loan Corporation. The counts charged that she willfully and feloniously made false statements on September 4, 1934, and June 4, 1934, to the Home Owners' Loan Corporation regarding the amounts due her from these ap-

plicants, to wit, $590, instead of $285, and $650 and one year of accrued interest instead of $150, and offered to the Home Owners' Loan Corporation to release her claims in the property of the applicants in exchange for Home Owners' Loan Corporation bonds in the specified false amounts. The parenthetical citation at the end of each count indicated that it was based on Section 8 (a) of the Home Owners' Loan Act. (R. 13–16; 31–34.)

Counts 12 and 25 charged that the petitioner on June 5 and between July 21 and September 5, 1934, unlawfully and feloniously received from property owners Benemerito and Sciortine, respectively, the sums of $50 and $100 in payment of proposed and purported aid in connection with projected loans from the Home Owners' Loan Corporation. The counts further charged that these payments were not for ordinary charges or fees as authorized by the Home Owners' Loan Corporation for necessary services actually rendered. The parenthetical citation at the end of each count indicated that it was based on Section 8 (e) of the Home Owners' Loan Act. (R. 27–28; 49–50.)

Counts 8, 14, 20, and 24 charged that petitioner on July 29, April 1, in July, and on July 20, 1934, unlawfully and feloniously entered into a contract with property owners Beyer, Wilson, Iovino, and Sciortine, respectively, to receive the sums of $250, $40, $100, $300, in payment for petitioner's proposed and purported aid in connection with pro-

jected loans from the Home Owners' Loan Corporation. The counts further charged that these payments were not for ordinary charges or fees as authorized by the Home Owners' Loan Corporation for necessary services actually rendered. The parenthetical citation at the end of each count indicated that it was based on Section 8 (e) of the Home Owners' Loan Act. (R. 21–22; 30–31; 42–43; 48–49.)

Petitioner's motion to set aside the verdict was denied (R. 496). She received a sentence of a year and a day in prison on each of Counts 5, 12, 14, 15, 20, 24, and 25, the sentences to run concurrently. On Count 8, upon which imposition of sentence was suspended, she was placed on probation for two years (R. 6).

The indictment was returned on February 5, 1935 (R. 3). Petitioner pleaded not guilty to all counts on February 21, 1935 (R. 3). She did not immediately go to trial. Continuances were apparently granted (R. 3–4). On January 2, 1936, she pleaded guilty to Counts 7 and 12, withdrawing her former plea of not guilty (R. 4). However, on January 15, 1936, after an interval of eleven days, excluding Sundays and holidays, petitioner withdrew her plea of guilty on these counts (R. 4). The case was tried between May 13 and 19, 1936 (R. 5). Petitioner was sentenced on May 29, 1936 (R. 6).[3]

[3] While the petitioner's notice of appeal (R. 535–538), dated May 26, 1936, stated that the date of the judgment was

On June 1, 1936, the petitioner filed her notice of appeal and assignment of errors (R. 6.).[4] On June 30, 1936, the trial judge extended the time for the filing of the bill of exceptions and assignment of errors to August 18, 1936 (R. 6).[5] This was the only order of extension entered by the trial judge within thirty days after the taking of the appeal. The bill of exceptions was not settled and filed until October 1936 (R. 532).[6]

Subsequent to the expiration of thirty days from the taking of the appeal four orders of extension

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May 26, 1936, the docket entry appearing in the record (R. 6), which is verified by a certified copy thereof furnished by the United States Attorney for the Eastern District of New York, discloses that the sentence was rendered on May 29, 1936. At that time the judgment setting forth the sentence did not have to be signed by the judge who imposed the sentence, as is now required by the amendment of May 24, 1937, to Rule I of the Criminal Appeals Rules. Consequently, no written judgment appears in the record.

[4] While the petitioner's notice of appeal was dated May 26, 1936 (R. 535–538), the docket entry appearing in the record discloses that the notice was filed on June 1, 1936 (R. 6).

[5] This order does not appear in the record and the docket entry in the record merely shows that the order was entered on June 30, 1936 (R. 6). A certified copy of the order, furnished by the United States Attorney for the Eastern District of New York, discloses that the petitioner's time to file the bill of exceptions and assignment of errors was extended to August 18, 1936.

[6] The order settling the bill of exceptions leaves the date in October when it was settled blank. A stipulation and orders of extension appearing in the record indicate that the bill was settled between October 13 and 19, 1936 (R. 532–534; see also R. 596).

were entered, either by the trial judge or another judge of the district in his absence, extending the time for filing the bill of exceptions, on August 18, 1936 (R. 6), September 8, 1936 (R. 6), September 25, 1936 (R. 6, 33), and October 13, 1936 (R. 533, 534). Some if not all of these orders also purported to extend the time for filing the assignment of errors, and apparently were entered pursuant to consent of counsel for the Government (R. 533–534). Under the last order of extension the petitioner was allowed until October 19, 1936, to file her bill of exceptions and assignment of errors. An amended assignment of errors appears in the record (R. 539–591), but the date of its filing is not disclosed.

The Circuit Court of Appeals for the Second Circuit unanimously held (R. 595–599) that it could not consider the errors assigned by the petitioner which arose upon the bill of exceptions because the bill was not settled within the time permitted by the Criminal Appeals Rules. It therefore limited its consideration of the appeal to the sufficiency of the indictment and the judgment of the trial court. It upheld the constitutionality of the Home Owners' Loan Act as well as the particular penal provisions upon which the counts of the indictment under which the petitioner was convicted were based. Accordingly, it affirmed the judgment of the District Court (R. 599–600).

SUMMARY OF ARGUMENT

I

The court below correctly refused to consider the assigned errors based upon the bill of exceptions, for this bill of exceptions was not settled and filed within the time permitted by the Criminal Appeals Rules. Only one order was entered by the trial judge within thirty days after the appeal was taken. He thereafter had no authority to make further extensions. *Ray* v. *United States,* 301 U. S. 158. The Circuit Court of Appeals did not grant, and was not asked to grant, any further extension.

II

Counts 5 and 15 charge that petitioner made false statements to the Home Owners' Loan Corporation, as to the amount of indebtedness due him by a mortgagor, for the purpose of influencing its action. This charge states an offense under Section 35 of the Criminal Code. The parenthetical citation, indicating that Section 8 (a) of the Home Owners' Loan Act was relied on, may be disregarded. The conviction may thus be affirmed without consideration of any part of the Home Owners' Loan Act.

In addition, the Court should note that petitioner withdrew a plea of guilty on Count 12 after expiration of the time allowed by the Criminal Appeals Rules. If these time limits are jurisdic-

tional, the judgment as to that count is one rendered by consent so that the entire judgment must be affirmed.

III

Sections 8 (a) and 8 (e) of the Home Owners' Loan Act are constitutional. Section 8 (e) must be considered both before and after its amendment on April 27, 1934.

Before its amendment, Section 8 (e) forbade any person from making "any charge in connection with a loan * * * except ordinary charges authorized and required by the Corporation for services actually rendered." The power of Congress to protect borrowers from improvident contracts and extortion seems beyond question. Similarly there can be equally little question as to the power to authorize the Corporation to promulgate regulations under Section 8 (e). *United States* v. *Grimaud,* 220 U. S. 506, 521. Regulations forbade all except "ordinary and necessary charges." Since these provisions are directed to real estate agents and brokers, there should be little difficulty in their being able to determine what course is lawful.

Similar considerations apply to Section 8 (e) after its amendment. The failure of the amended statute to specify that the service must be in connection with a loan by the corporation does not invalidate it. No reasonable construction would lead to the application of the statute to any other type of transaction.

Section 8 (a) forbidding false statements in order to influence the action of the Corporation seems well within the Congressional power. Petitioner's objection that it might penalize a trivial offense is inapplicable to the facts of this case. The fact that she knowingly made the false statements indicates that they were material. It seems evident that overstating the amount of loan indebtedness for which bonds would be exchanged, was expected to be an important factor in the Corporation's decision as to what amount of bonds to offer petitioner.

Since the sentences are concurrent, the conviction must be affirmed, if any one of the Sections 8 (e) or (a) are constitutional.

IV

This case does not present the broad issues as to the constitutionality of the Home Owners' Loan Corporation which petitioner seeks to raise.

A. The penal provisions in Sections 8 (a) and 8 (e) are separable from the general provisions of the Act. Congress had power to prevent a fraud upon the public fund and those who sought to borrow from the Corporation, whether or not the Corporation should ultimately be held constitutional. Since these penal provisions may be enforced independently of the remainder of the Act, and since Congress must have intended to protect the Corporation and its borrowers,

whether or not its substantive operations were constitutional, the penal provisions must be taken to be separable. Accordingly, the general provisions are not in issue.

B. Apart from the separability of the penal provisions, petitioner has no standing to challenge the general provisions of the Act. These provisions do not affect and have not injured petitioner. It results that she is in no position to attack them as invalid. *New York ex rel. Hatch* v. *Reardon,* 204 U. S. 152, 161; *Virginian Railway Co.* v. *Federation,* 300 U. S. 515, 558.

C. Finally, and independent of these considerations, is the fact that petitioner is estopped to challenge the validity of the general provisions because under them she has sought benefits: the exchange of mortgage notes for the Corporation bonds, guaranteed by the United States. *Wall* v. *Parrot Silver & Copper Co.,* 244 U. S. 407, 411–412; *United Gas Co.* v. *Railroad Commission,* 278 U. S. 300, 307–308.

V

But if this Court should consider the constitutionality of the Home Owner's Loan Act as a whole, it is evident that the Corporation serves to carry out valid Federal purposes.

A. Twenty-four percent of the total non-governmental debt of the United States in 1934 was represented by urban home mortgages. This debt of about $17,700,000,000 represents a borrowing by

about 58 percent of the urban home owners, and the mortgaged homes house about 23,000,000 persons. It is apparent that both financial institutions and the homes of about one-fifth of the population required the maintenance of tolerably healthy conditions in the mortgage investment field. Yet in 1932 there had been almost 250,000 foreclosures of urban homes; by June of 1933 foreclosures were occurring at a rate of almost 70,000 a month. Available data indicate that about 44 percent of the first mortgages on owner-occupied urban homes were in default, and about 54 percent of the second mortgages.

During its three years of lending life, the Home Owners' Loan Corporation granted relief in the amount of over $3,000,000,000 to over a million needy mortgagors. The mortgagors in return gave 15 year amortized mortgage notes, bearing interest at the rate of 5 per cent. The Corporation now holds about one sixth of the urban mortgage debt of the nation, and has contributed to the marked decline in the number of foreclosures and to the improved condition of financial institutions which hold mortgage investments.

B. The Home Owners' Loan Corporation, just as the other Government created financial corporations which have preceded it, is an important fiscal agency of the United States and seems well within the reach of the broad fiscal powers of Congress. See *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S.

240, 303; *First National Bank* v. *Union Trust Co.*, 244 U. S. 416, 419.

The undisputed constitutionality of the Federal Home Loan Bank System (see *Smith* v. *Kansas City Title Co.*, 255 U. S. 180) seems necessarily to cover the Home Owners' Loan Corporation as well. The privilege of rediscount on sound mortgage collateral, offered by the Home Loan Bank System, cannot provide a permanent salvation for hard-pressed financial institutions in a time of a continuing urban mortgage crisis. The Corporation was designed to provide direct relief to mortgagors in order to insure the efficacy of the aid offered to the institutional mortgagees by the Home Loan Bank System. Moreover, the Corporation was authorized to purchase the bonds of the Home Loan Banks, and, under the rationale of *Smith* v. *Kansas City Title Co.*, is a fiscal agency of the United States for that reason alone.

Petitioner's failure to challenge the constitutionality of the Act after the amendments authorizing this purchase means that the judgments must be affirmed, for the concurrent sentences include one count based upon offenses committed after the date of the first of these amendments.

Even apart from its intimate relationship to the Federal Home Loan Bank System, the corporation is an important fiscal agency of the United States. It obviously served to protect the $800,000,000 urban mortgage investment of national banks and member banks of the Federal Reserve System.

Perhaps of equal importance, its effect in protecting the investments, and so the solvency, of other financial institutions served to protect the national banking system; the crisis of 1933 is too recent to permit any argument that national banks are only indirectly and remotely affected by the condition of other financial institutions.

C. The Corporation may, alternatively, be sustained because its operations provide for the general welfare.

It is unquestioned that Congress has a wide discretion in its decision as to what constitutes the general welfare. Its conclusion that the Corporation is directed toward this end seems plainly correct whether its functions be viewed as providing credit to an important class of the population or as preserving the home ownership of the nation's citizens. The close analogy to the Farm Credit System, the constitutionality of which has been settled beyond doubt, seems conclusive as to whether or not the extension of credit to a large class of the population constitutes a provision for the general welfare. See *Federal Land Bank* v. *Gaines,* 290 U. S. 247, 254. It is equally clear that the protection of their home ownership for over a million citizens, distributed through every State of the union, is a matter of basic public interest. *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398. And, as fully as the relief of poverty in old age, *Helvering* v. *Davis,* No. 910, October Term, 1936,

does the preservation of home ownership relate to a problem of national concern. Petitioner apparently does not disagree with these conclusions, but argues merely that the accomplishments of the Corporation have been limited in extent. It seems to us to be obvious both that this cannot be the test of constitutionality and that the national benefits realized through the operations of the Corporation have in fact been of the first magnitude.

Even if it were possible for powers delegated to the National Government to be an invasion of the rights of the States or of the people under the Tenth or Ninth Amendment, the decision in *Helvering* v. *Davis, supra*, is conclusive that no such invasion arises through the operations of the Corporation.

ARGUMENT

I

THE CIRCUIT COURT OF APPEALS CORRECTLY REFUSED TO CONSIDER THE ERRORS ASSIGNED BY THE PETITIONER WHICH AROSE UPON THE BILL OF EXCEPTIONS, SINCE THAT BILL WAS NOT SETTLED AND FILED WITHIN THE TIME PERMITTED BY THE CRIMINAL APPEALS RULES

We submit that the Circuit Court of Appeals rightly held that, since the bill of exceptions was not settled and filed within the time permitted by the Criminal Appeals Rules, it was foreclosed from considering the errors assigned by the petitioner which arose upon the bill of exceptions.

The only order of extension entered by the trial judge within thirty days after the taking of the appeal, as permitted by Rule IX of the Criminal Appeals Rules (*supra,* p. 6), was that of June 30, 1936, which extended the time for the settlement and filing of the bill of exceptions to August 18, 1936. That the trial judge's authority to extend the time for the settlement and filing of a bill of exceptions expires, under Rule IX, on the 30th day after the taking of the appeal is beyond dispute (*Ray* v. *United States,* 301 U. S. 158, 162, and cases cited), and appears to be conceded by the petitioner (Br. 10). It is also beyond question that the Circuit Court of Appeals, upon motion and after five days' notice thereof, has the power under Rule IV, paragraph 3 (*supra,* p. 6) to shorten or lengthen the time of a valid extension granted by the trial judge by modifying or vacating his order or by giving directions to the trial court or trial judge. *Ray* v. *United States,* pp. 162–164.

No extension of time for the settlement and filing of the bill of exceptions was granted by the Circuit Court of Appeals in the instant case and, so far as the record discloses, no such extension was requested of that court.[7] Since the bill was

[7] The petitioner states (Br. 11) that "It [the court below] did not say that the appellant had offered inadequate excuses, nor that her *oral motion on the argument* of the appeal, repeated in her reply brief, was not timely." [Italics ours.] While the petitioner seems to indicate by this state-

not settled and ordered filed until October 1936, several months after the expiration of the only valid order of extension granted by the trial judge, and since no extension was requested of or granted by the Circuit Court of Appeals, that court was clearly right in holding that it was without power to consider the errors assigned by the petitioner which arose upon the bill of exceptions.

This decision, of course, is far different from a holding that an appellate court may not on a proper application under Rule IV, paragraph 3, extend the time for settling and filing the bill of excep-

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ment that she made an oral motion on argument of the appeal in the Circuit Court of Appeals for an extension of time, which was repeated in her reply brief in that court, there is nothing in the opinion of the Circuit Court of Appeals or elsewhere in the record which indicates that any such motion was made. A telegram from the United States Attorney for the Eastern District of New York, dated November 13, 1937, states that the Assistant United States Attorney who argued the appeal for the Government "does not recall any formal motion made orally to the court but does recall that appellant argued bill of exceptions was duly filed and was before the court for review on same grounds urged in appellant's reply brief." Examination of the reply brief to which the petitioner refers does not disclose any such motion. In short, that brief was based merely upon the propositions that the trial judge should be permitted under certain circumstances to grant extensions, although the thirty-day period prescribed by Rule IX had elapsed and that the Circuit Court of Appeals, because of the circumstances referred to in such brief, should consider the bill of exceptions in the instant case even though it was not settled and filed within the period of the only valid order of extension granted by the trial judge. Similar considerations were presented in the petition for writ of certiorari filed in this Court.

tions. There was no occasion for the Circuit Court of Appeals to consider in the instant case whether it had such power, because no such power was invoked by the petitioner. What the petitioner is in effect urging is that the Circuit Court of Appeals should have considered the bill of exceptions notwithstanding that it was settled and filed at a time when no valid orders of extension, either by the District Court or the Circuit Court of Appeals, were in effect. The Circuit Court of Appeals, of course, had no such power since it is well settled that the time limits prescribed by the Criminal Appeals Rules for the settlement and filing of bills of exceptions are jurisdictional and that, consequently, a bill filed out of time may not be considered.[8]

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[8] *Gallagher* v. *United States*, 82 F. (2d) 721, 722 (C. C. A. 8th); *Wolpa* v. *United States*, 84 F. (2d) 829, 831 (C. C. A. 8th); *Slade* v. *United States*, 85 F (2d) 786, 787 (C. C. A. 10th); *Wainer* v. *United States*, 87 F. (2d) 77, 80 (C. C. A. 7th), certiorari denied, 300 U. S. 669; *Goddard* v. *United States*, 86 F. (2d) 884, 885 (C. C. A. 10th); *Evans* v. *United States*, 90 F. (2d) 851, 852 (C. C. A. 5th); *United States* v. *Adamowicz*, 82 F. (2d) 288 (C. C. A. 2d), certiorari denied, 298 U. S. 664; *Cusamano* v. *United States*, 85 F. (2d) 132, 133 (C. C. A. 8th); *Spero* v. *United States*, 85 F. (2d) 134 (C. C. A. 8th), certiorari denied, 299 U. S. 601; *Cary* v. *United States*, 86 F. (2d) 461, 462 (C. C. A. 9th), certiorari denied, 300 U. S. 659; *St. Charles* v. *United States*, 86 F. (2d) 463, 464 (C. C. A. 9th), certiorari denied, 299 U. S. 611; *Pinkussohn* v. *United States*, 88 F. (2d) 70, 71 (C. C. A. 7th); *Miller* v. *United States*, 88 F. (2d) 102 (C. C. A. 9th); *Hightower* v. *United States*, 88 F. (2d) 302 (C. C. A. 9th); *Young* v. *United States*, 88 F. (2d) 305 (C. C. A. 10th).

As reasons why the Circuit Court of Appeals should have considered the bill of exceptions, the petitioner points to difficulties encountered in obtaining the stenographic minutes of the trial, the short time remaining after the minutes were obtained within which to prepare and settle the bill of exceptions, and delays in printing (Br. 6–7). But these are considerations which the petitioner should have addressed to the Circuit Court of Appeals by a proper motion under Rule IV, paragraph 3, for modification of the order of the trial judge by lengthening the extension granted by that judge for the settlement and filing of the bill of exceptions. *Ray* v. *United States,* p. 164.

Since the authority of the trial judge to settle a bill of exceptions, in the absence of an extension by the appellate court, is limited to the period prescribed by Rule IX, the mere fact that the United States Attorney consented to orders which would have permitted an untimely settlement of the bill of exceptions is, of course, of no avail to the petitioner. As was pointed out in *Wainer* v. *United States,* 87 F. (2d) 77 (C. C. A. 7th), certiorari denied, 300 U. S. 669 (p. 80):

> Appellants argue, however, that by stipulation of the parties or by estoppel the filing of the bill of exceptions beyond the time allowed may satisfy the requirements. Such a contention does violence to logic, for, *if the requirements of the rules are jurisdictional, neither the consent of the parties nor*

> *any act of the United States Attorney or of the Government is effective. Consent of the parties cannot give jurisdiction to courts. Pittsburgh, C. & St. L. Railway* v. *Ramsey,* 22 Wall. 322, 22 L. Ed. 823; *Chapin* v. *Irwin* (D. C.), 281 F. 831; *U. S.* v. *Adamowicz,* 82 F. (2d) 288 (C. C. A. 2). [Italics ours.]

See also *Exporters* v. *Butterworth-Judson Co.,* 258 U. S. 365, 369; *Slade* v. *United States,* 85 F. (2d) 786, 787 (C. C. A. 10th).

We assume that this Court, if it concludes that the Circuit Court of Appeals should have considered the bill of exceptions, will remand the case to that court for consideration of the alleged errors arising upon the bill of exceptions. Accordingly, we deem it unnecessary here to discuss such alleged errors.

II

The Judgments of Conviction Should Be Affirmed Irrespective of the Constitutionality of Any Part of the Home Owners' Loan Act

As the petitioner was given concurrent sentences of a year and a day on each of seven of the eight counts upon which she was convicted and sentenced[9] (Counts 5, 12, 14, 15, 20, 24, and 25;

[9] The eighth count is not involved in this appeal since the court suspended the imposition of sentence and placed the defendant on probation (R. 6). This count was, of course, not appealable since no sentence was rendered. *United States* v. *Lecato,* 29 F. (2d) 694 (C. C. A. 2d); *United States* v. *Messina,* 36 F. (2d) 699 (C. C. A. 2d);

see R. 6), it follows that if any one of these counts may be sustained the judgment of conviction must be affirmed. *Claassen* v. *United States,* 142 U. S. 140, 146–147; *Abrams* v. *United States,* 250 U. S. 616, 619; *Sinclair* v. *United States,* 279 U. S. 263, 299. We submit that Counts 5 and 15 may be sustained under Section 35 of the Criminal Code, and that the judgment on Count 12 was consented to by the petitioner and must be affirmed on review by an appellate court.[10]

United States v. *Levinson*, 54 F. (2d) 363 (C. C. A. 2d); *United States* v. *Knickerbocker Fur Coat Co.*, 66 F. (2d) 368 (C. C. A. 2d); *Starklof* v. *United States*, 20 F. (2d) 32 (C. C. A. 9th).

[10] These questions were not considered by the courts below and were not raised by the petitioner. They may, however, be presented for the consideration of the Court as arguments in support of the judgments below. *Stelos Co.* v. *Hosiery Corp.*, 295 U. S. 237, 239; *Langnes* v. *Green*, 282 U. S. 531, 537–538; *United States* v. *American Ry. Express Co.*, 265 U. S. 425, 435–436; see *Farmer's Guide Co.* v. *Prairie Co.*, 293 U. S. 268, 281; Compare, however, *Zellerbach* v. *Helvering*, 293 U. S. 172, 182; *Lynch* v. *United States*, 292 U. S. 571, 587–588; *Burnet* v. *Commonwealth Improvement Co.*, 287 U. S. 415, 418. In these cases the Court has refused to pass on respondents' contentions because they had not yet been considered by the lower courts. This reasoning would appear to be inapplicable here. If the penal provisions upon which Counts 5 and 15 purported to be based were held unconstitutional by this Court, there would be no new trial as to those charges in the trial court and the question as to whether the charges make out offenses under Section 35 could not again be urged in this proceeding. That the Government under the Act of May 10, 1934, c. 278, 48 Stat. 772 (U. S. C., Title 18, Secs. 587, 588), perhaps may be permitted to present the charges to another grand jury, with a

1. Count 15 (R. 31–34), which alleged that the offense was committed on or about June 4, 1934, charged that the petitioner:

> for the purpose of influencing the action of the Home Owners' Loan Corporation, a corporation organized and existing under and by virtue of an Act of Congress * * * upon an application for a loan * * * filed with the said Home Owners' Loan Corporation by said Nellie R. Wilson, said loan being for the purpose, among others, of refunding an indebtedness to said defendant, Gertrude Kay * * * secured by a mortgage held and owned by the said defendant on said premises, did then and there, in a certain instrument known as Form No. 2 Revised, dated June 4, 1934, and filed with said Home Owners' Loan Corporation, unlawfully, knowingly, willfully and feloniously make to the said Home Owners' Loan Corporation a certain false statement in writing * * *.

There then follows a "Mortgagee's Consent to Take Bonds," addressed to the Home Owners'

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view to obtaining a new indictment based on Section 35, does not, it seems to us, change the situation. Obviously, the grand jury could refuse to indict for reasons having no relevancy to the question whether the charges stated offenses under Section 35 and the consideration of that question would forever be foreclosed. As to Count 12, if the appeal may be considered as one from a consent judgment, an affirmance would necessarily result on the theory that there are no questions presented for review by the appellate court (see *supra*, pp. 34–36).

Loan Corporation and dated June 4, 1934, in which the defendant made the statement that she was a holder of a second mortgage or other obligation, which constituted a lien or claim on the title to the home property of Nellie R. Wilson in the sum of $650 and one year's interest, including unpaid balance of principal and interest to date. The count then proceeded to allege that:

> as the defendant, Gertrude Kay * * * well knew, there was not due to the defendant on * * * the 4th day of June, 1934, on the mortgage held by the said defendant * * * on the premises aforesaid * * * the sum of Six Hundred and Fifty ($650.00) Dollars, but that in truth and in fact there was due to the said defendant * * * the sum of One Hundred and Fifty ($150.00) Dollars, as the said defendant then and there well knew * * * such statement * * * to be false; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided (Title 12, United States Code, Section 1467 (a)).

If this count charged an offense punishable by any law of the United States, it appears to be settled that a conviction thereon must be sustained even though the pleader may have had in mind when he drew the count some other statute under which the count for some reason could not be upheld. Allegations not essential to a charge under the statute upon which the count can be sustained

will be treated as surplusage. *Hammer* v. *United States,* 271 U. S. 620, 625; *United States* v. *Nixon,* 235 U. S. 231, 235; *United States* v. *George,* 228 U. S. 14; *Williams* v. *United States,* 168 U. S. 382, 389; *Vedin* v. *United States,* 257 Fed. 550 (C. C. A. 9th), certiorari denied, 250 U. S. 663; *Maresca* v. *United States,* 277 Fed. 727, 741–742 (C. C. A. 2d), certiorari denied, 257 U. S. 657; *Farley* v. *United States,* 269 Fed. 721, 724 (C. C. A. 9th). To illustrate, in the *Farley* case, the defendant was indicted under Section 3242, Revised Statutes, for unlawfully carrying on the business of a retail liquor dealer without having paid the special tax as required by law. The court held that Section 3242 had been impliedly repealed by the National Prohibition Act but that the indictment sufficiently charged a sale of liquor in violation of the National Prohibition Act and it was therefore sustained. The allegation with respect to the omission to pay the special tax was treated as surplusage.

The mere fact that the pleader at the end of the count in question indicated by the use of the parenthetical citation that the statute which he had in mind when he drew the count was Section 8 (a) of the Home Owners' Loan Act does not prevent the utilization of some other statutory provision to sustain the count if it cannot be upheld under the section indicated. Thus, in the *Maresca* case, *supra,* it was said (p. 71):

In the Nixon Case the entries on the back and in the caption of the indictment described it as being for violation of a certain statute, which was inapplicable, and the court declared that this did not invalidate the indictment, but that it was for the court to say whether there was any statute in existence which made the facts charged a a crime; "an indictment must set out facts and not the law," and the indorsements constituted no part of the indictment. In the absence of an allegation in the count that the unlawful act charged constituted a violation of a specific statute, the mere indorsement in parentheses at the end of the count is in the opinion of the majority of the court of no greater significance than the same words would have if they had been indorsed on the margin of the indictment or on the back of the indictment or in the caption of the indictment. In all these cases the indorsement indicates the intention of the pleader to rest the indictment upon the statute named, but that intention cannot nullify the indictment or in any wise conclude the government if there is some other statute which can sustain it. For many years it has been the practice in the Southern district in drawing indictments to do what was done in drawing this count, but the practice is an unfortunate one, as it is quite unnecessary to allege the particular statute which has been violated.

The parenthetical reference at the end of the count to the statutory provision which the pleader had in mind in drawing the count may, we believe, be rejected as surplusage. The count was not, we submit, defective in omitting reference to the statute on which it could be predicated. As was said by this Court in *Hammer* v. *United States, supra* (p. 625), "The indictment does not specify the section under which it is drawn, but the omission is immaterial."

In the light of the principles referred to we contend that this count may be sustained under Section 35 of the Criminal Code and that therefore the constitutionality of the penal provisions of the Home Owners' Loan Act which the pleader had in mind in drafting the count is immaterial.

At the time of the offense charged in Count 15, Section 35 so far as material provided that—

> whoever * * * for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully * * * make or cause to be made any false or fraudulent statements or representations * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

That Count 15 meets all of the material elements of this section would seem apparent. Reduced to

its essentials, it alleged that the defendant falsely stated the amount of indebtedness due her on her second mortgage in an application filed with the Home Owners' Loan Corporation, a corporation organized under and by virtue of an Act of Congress, for the purpose of influencing the action of that corporation upon an application for a loan. It cannot be disputed, of course, that the Home Owners' Loan Corporation is a corporation in which the United States is a stockholder (see *United States* v. *Walter,* 263 U. S. 15). The purpose of the misstatement was to induce the corporation to turn over its bonds to the petitioner in exchange for evidence of an indebtedness greater than that which was actually owing to her. Default by the mortgagor was made more likely, and the recovery on foreclosure of the advances to him was made more doubtful because of the inflated value of the loan. Accordingly, the count sufficiently charged that the misstatement was made with the intent of "cheating and swindling or defrauding" a corporation of which the United States was a stockholder. It was not necessary, of course, that the Government should sustain an actual pecuniary loss because of the petitioner's misstatement; it was sufficient merely if such misstatement was made for the purpose and with the intent of causing pecuniary loss. Cf. *United States* v. *Cohn,* 270 U. S. 339. The mere fact that the petitioner's false statement was not made under oath does not remove the offense charged from the purview of

Section 35. *United States* v. *Dumas*, 288 Fed. 247 (E. D. N. Y.).

2. We moreover submit that the fifth count of the indictment can similarly be sustained under Section 35 of the Criminal Code, as amended June 18, 1934, c. 587, 48 Stat. 996, without regard to the constitutionality of the Home Owners' Loan Act as a whole or the penal provisions which the pleader had in mind in drafting that count.

Count five (R. 13–16), which was based upon another misstatement by the petitioner as to the amount due her on a second mortgage in connection with an application to the Home Owners' Loan Corporation for a loan, is similar in all essential respects to Count 15, except that the offense was laid on or about September 4, 1934.

Section 35 of the Criminal Code, as amended on June 18, 1934, provides, so far as material,[11] that:

> whoever shall * * * make or cause to be made any false or fraudulent statements or representations * * * in any matter within the jurisdiction * * * of any corporation in which the United States of America is a stockholder shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

It will be observed that the section as amended does not require that the false representation must be

[11] We have set out Section 35, *supra*, pp. 4–5, to show the relevant provisions before and after its amendment on June 18, 1934.

made "with the intent of cheating and swindling or defrauding" a corporation of which the United States is a stockholder. It would therefore seem apparent that after the amendment the false representation need not be made with any intent that it cause pecuniary loss to the Government; that it is sufficient merely that it be made "in any matter within the jurisdiction of any corporation in which the United States of America is a stockholder." It was apparently the presence of the words "cheating and swindling or defrauding" which led the Court in *United States* v. *Cohn,* 270 U. S. 339, 346–347, to hold that Section 35 related only to a pecuniary or property loss by the United States.[12]

As the misstatement charged in Count 5 was obviously made in connection with a matter "within the jurisdiction" of the Home Owners' Loan Corporation, there would seem to be no question but that the count states an offense under Section 35 as amended. But even if the section, despite

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[12] The legislative history of the amendment is meagre, but indicates that a pecuniary loss was no longer to be required under the section. The relevant part of the amendment was made in the Senate Committee, after passage of the original bill by the House. The Committee said (Sen. Rept. No. 1202, 73d Cong., 2d Sess.):

"The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of 'hot' oil, where false papers are presented in connection therewith,

the amendment, may still be considered as requiring an intent to cause pecuniary loss, we submit that, for the reasons stated in connection with Count 15, the conviction should be sustained on Count 5 under Section 35 of the Criminal Code, irrespective of the constitutionality of Section 8 (a) of the Home Owners' Loan Act.

3. It should also be pointed out that as to Count 12 the petitioner on January 2, 1936, entered a plea of guilty but was permitted by the trial judge on motion made on January 15, 1936, to withdraw that plea (R. 4). It is evident, therefore, that 11 days, excluding Sundays and legal holidays, intervened between petitioner's plea of guilty and her

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and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to the actual wages paid. * * *"

The explanation on the floor of the Senate (78 Cong. Rec. 11270) relates only to the false returns by contractors and to the protection of Government property which was the occasion for the original House bill.

It is evident that the false statements relating to the control of "hot oil" shipments could not result in a pecuniary loss to the United States (see N. I. R. A., Sec. 9 (c), c. 90, 48 Stat. 195; *Panama Refining Co.* v. *Ryan*, 293 U. S. 388), and must be the explanation for the elimination of the words "cheating and swindling or defrauding." However, it should be noted that on May 10, 1934, shortly before the Committee report on May 18, 1934, a tax on all petroleum production had been enacted (c. 277, secs. 604, 605, 48 Stat. 680, 766), in part to aid in the enforcement of the "hot oil" legislation.

motion to withdraw such plea.[13] Rule II, paragraph 4, of the Criminal Appeals Rules provides that "A motion to withdraw a plea of guilty shall be made within ten (10) days after entry of such plea and before sentence is imposed," and Rule XIII, so far as pertinent, provides that "For the purpose of computing time as specified in the foregoing rules, Sundays and legal holidays (whether under Federal law or under the law of the State where the case was brought) shall be excluded." In providing that the motion to withdraw a plea of guilty shall be made "within 10 days after the entry of such plea," it would seem that paragraph 4 of Rule II is mandatory in character. See *Escoe* v. *Zerbst,* 295 U. S. 490, 493; *Ex parte Jordan,* 94 U. S. 248, 251. This would seem also to be indicated by the view that "The time limits fixed by the Rules [Criminal Appeals Rules] are jurisdictional" and that the purpose of the Rules "is to force early termination of criminal cases." *Fewox*

[13] There were two Sundays in the period between January 2, 1936, and January 15, 1936, but no legal holidays. In the State of New York Saturday is not a half holiday in computing days elapsed in any court proceeding. McKinney's General Construction Law, Section 20; *Van Orden* v. *Simpson*, 90 Misc. 322, 324 (Appellate Term); *People* v. *Kearney*, 47 Hun. 129, rev'd on other grounds, 110 N. Y. 188. Eleven days therefore intervened between the plea of guilty and the motion to withdraw such plea.

v. *United States,* 77 F. (2d) 699, 700 (C. C. A. 5th).

If the withdrawal of the petitioner's plea of guilty may be disregarded because the motion therefor was not timely made, it would seem to follow that her appeal from the sentence on Count 12 was in effect an appeal from a judgment rendered by consent. While such an appeal under the practice obtaining in the Federal courts will not be dismissed, it is settled that the judgment must be affirmed without consideration of the merits of the appeal. *Nashville C. & St. L. R. R. Co.* v. *United States,* 113 U. S. 261; *United States* v. *Babbitt,* 104 U. S. 767; *Pacific R. R.* v. *Ketchum,* 101 U. S. 289; *Berman* v. *United States,* 88 F. (2d) 645, 646 (C. C. A. 2d), pending in this Court, No. 26, Oct. Term, 1937. If, for the reasons stated, petitioner's conviction on Count 12 should be affirmed without consideration of the merits it is apparent that no consideration need be given either to the constitutionality of the Home Owners' Loan Act as a whole or the section on which that count is purported to be based. This would, of course, also be true as to the remaining counts on which petitioner was convicted, since the sentences on those counts were directed to run concurrently with the sentences under Count 12 and involve the same punishment as was imposed on that count. (See *supra,* p. 25.)

III

SECTIONS 8 (A) AND 8 (E) OF THE HOME OWNERS' LOAN ACT ARE CONSTITUTIONAL

A. SECTION 8 (E), AS ENACTED ON JUNE 13, 1933, IS CONSTITUTIONAL

Petitioner contends that Section 8 (e) of the Home Owners' Loan Act is unconstitutional as being too vague and indefinite. Her argument (Br. 25–28) seems confined to the section as it was amended on April 27, 1934. She apparently overlooks the fact that Count 14 was based upon the section as it was originally enacted on June 13, 1933. We submit that this section, as originally enacted, was constitutional and that Count 14 states an offense under that section.

Count 14 of the indictment (R. 30–34) alleges that the petitioner

> on or about the 1st day of April, 1934, * * * did then * * * unlawfully, knowingly, wilfully and feloniously contract with one Nellie R. Wilson for the payment to the said defendant [petitioner], Gertrude Kay, alias Gertrude Klein, by the said Nellie R. Wilson, of a charge of Forty ($40.00) Dollars; that the said Nellie R. Wilson, as the defendant well knew, was a person applying to the Home Owners' Loan Corporation * * * for a loan on certain property owned and occupied by the said Nellie R. Wilson as her home * * *

> * * * that the said contract for the said charge made as aforesaid, was in connection with the said loan to the said Nellie R. Wilson from the Home Owners' Loan Corporation, and was for alleged services rendered and to be rendered by the said defendant, Gertrude Kay, alias Gertrude Klein, to the said Nellie R. Wilson, in connection with the said loan; that the said contract for said charge made as aforesaid was not for an ordinary charge or fee authorized and required by the said Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services * * * *

Section 8 (e) of the Home Owners' Loan Act as enacted on June 13, 1933,[14] provides:

> No person * * * shall make any charge in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act except ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfecting of title, appraisal, and like necessary services.

The action of the Board of Directors of the Home Owners' Loan Corporation referred to in the instant section was taken on January 23, 1934,

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[14] Section 8 (e) was not amended until April 27, 1934, or 26 days subsequent to the commission of the crime charged in Count 14.

by a Resolution which specifically provides that the "ordinary charges authorized and required" should include (1) an appraisal fee, as approved by the Board, (2) a fee for a character report, as approved by officials of the Corporation, (3) necessary recording fees, (4) necessary charges for perfecting title, over $75 only on approval of Board, (5) necessary and usual fees for title abstracts and opinions, as approved by counsel of the Corporation, (6) charges for escrow services and closing loans, as approved by counsel of the Corporation, (7) "any other necessary charge for like necessary services, as specifically approved by the Board of Directors." (A copy of the Resolution was available on request in all state offices; its full text is in the Appendix, *infra*, p. 123.)

1. There can be little question but that Congress had the power to limit and regulate the charges which could be made in connection with the granting of a Government loan. The Home Owners' Loan Corporation was designed to offer direct aid to the small home owner who was in default on his mortgage indebtedness. Section 8 (e) was designed to protect home owners "against improvident contracts, in the interest not only of themselves and their families but of the public" (*Yeiser* v. *Dysart et al.*, 267 U. S. 540, 541), and Congress could "by all suitable laws guard and protect the fund thus devoted from being diverted from its

object by either the craft or the extortion of unscrupulous agents" (*United States* v. *Hall*, 98 U. S. 343, 356).[15]

2. Similarly, we think that there can be equally little question as to the power of Congress to authorize the Home Owners' Loan Corporation to promulgate regulations pursuant to Section 8 (e) and to decree that a violation of these rules would be an offense punishable according to the terms of the statute. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 85; *United States* v. *Grimaud*, 220 U. S. 506, 521; *Field* v. *Clark*, 143 U. S. 649, 694.

Petitioner (Br. 26) objects because the Resolution was not set out in the indictment. The record does not disclose that the petitioner at any time prior to the judgment by the District Court attacked the validity of the indictment because of the absence of the resolution. No such question, we submit, may now be raised. In any event, this resolution need not be alleged, because judicial notice can be taken thereof.

3. The only remaining question is whether Section 8 (e) and the Resolution is sufficiently specific to define a crime.

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[15] See also *Hines* v. *Stein*, 298 U. S. 94, 98; *Margolin* v. *United States*, 269 U. S. 93; *Calhoun* v. *Massie*, 253 U. S. 170, 173–174; *Frisbie* v. *United States*, 157 U. S. 160, 166; *Purvis* v. *United States*, 61 F. (2d) 992, 998 (C. C. A. 8th).

It should be pointed out that petitioner made no motion for a bill of particulars and it is fair to presume that she was fully apprised of the crime with which she is charged. Nor did she direct any preliminary motions to the indictment, such as a demurrer or a motion to quash.

With regard to the facts of this case, the question is whether petitioner had notice that her charges were unlawful because they were not the "ordinary charges authorized and required by the Corporation" and which were permitted by the Resolution of January 23, 1934.

The Resolution (*infra,* p. 123) lists six categories of charges which may be made for specified services and a seventh general provision, requiring specific approval of the Board of Directors. These services were performed by persons approved by the officers of the Corporation, and payment to them was made by the applicant through the Corporation. We think it most unlikely that petitioner, or any other person not employed by or with the approval of the Corporation, could have thought that the charges she exacted from the applicants were those contemplated by the Resolution. Similarly, it seems impossible that any person performing the services specified in the Resolution, at the request or with the approval of the Corporation, could be convicted under Section 8

(e). There seems, accordingly, no room for any ambiguity whatever in Section 8 (e) as originally enacted and as interpreted by the Resolution adopted pursuant to its terms.

Indeed, by citing the cases of *United States* v. *Monaghan* (E. D. Mo.), decided January 8, 1935, and *United States* v. *Damon and Layton* (D. Minn.), decided October 10, 1935 (neither case has been officially reported), in support of her attack upon the constitutionality of Section 8 (e) as amended on April 27, 1934, petitioner may perhaps have indicated an agreement with the view of those decisions that the section as originally enacted was constitutional. In *United States* v. *Monaghan,* the defendants contended that Section 8 (e), as enacted on June 13, 1933, was unconstitutional because it did not specifically define an offense. The District Judge, in overruling the demurrer, said that the instant provisions were "sufficiently definite and certain," that the "regulations relating to charges that might be made for services rendered in connection with loans would supplement the above statute so as to sufficiently inform the public as to what acts would constitute an offense." In *United States* v. *Damon and Layton,* the defendants were charged with having violated Section 8 (e), as amended on April 27, 1934. At the conclusion of the Government's case, Judge Molyneaux dismissed the proceeding

because Section 8 (e) as amended was unconstitutional. He said, however:

> All that Congress has to do is to pass it over again and put these words [found in the original Section 8 (e)] in and then they will have a good statute.

In the case of *United States* v. *Willard*, 8 F. Supp. 356 (W. D. Mich.), cited by petitioner (Br. 27), the defendant was charged with a violation of Section 8 (e), as enacted on June 13, 1933, at a time prior to the issuance of the regulations of January 23, 1934 (*supra*, p. 39). The holding that the statute was too vague prior to the promulgation of the Regulations has no application to the instant case.

For the reasons stated, we submit that Section 8 (e) of the Home Owners' Loan Act, as enacted on June 13, 1933, is valid and constitutional, and that the judgment of the District Court as to Count 14 should be affirmed. Petitioner does not argue that Count 14 does not charge an offense within the statute. It follows, since the sentences were concurrent, that this Court need not review the other counts of the indictment upon which petitioner was found guilty (see *supra*, p. 25).

B. SECTION 8 (E), AS AMENDED ON APRIL 27, 1934, IS CONSTITUTIONAL

Counts 12, 20, 24, and 25 of the indictment charge a violation of the provisions of Section 8

(e), as amended on April 27, 1934. Petitioner argues (Br. 25–28) that these provisions are so vague and indefinite as to be unconstitutional. Section 8 (e) as amended on April 27, 1934 (*supra*, pp. 3–4) provides:

> No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive any fee, charge, or other consideration from any person applying to the Corporation for a loan, whether bond or cash except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services.

As in the case of Section 8 (e) prior to its amendment, the only possible source of ambiguity is what is to be considered an "ordinary fee" for "like necessary services." The petitioner's argument that the section is ambiguous as to whether it applies to persons other than employees of the Corporation seems without merit. "No person, partnership, association, or corporation" could not be construed to be limited to employees of the Corporation.[16] Our discussion of the effect of the Resolution under Section 8 (e) prior to its amend-

[16] *Romano* v. *Maglino*, 154 Misc. (Mun. Ct. N. Y.) 818, reaches the contrary result and seems clearly erroneous.

ment is equally applicable to the section after the amendment. So, too, is our discussion of the power of Congress to forbid the charge in question, and to give to the Corporation the power to prescribe regulations (*supra,* pp. 39–40) equally applicable.

The Circuit Court of Appeals for the Third Circuit, in the case of *Handler* v. *Hill,* 90 F. (2d) 573, (certiorari denied because filed too late, No. 416, October Term, 1937), held that Section 8 (e), as amended April 24, 1934, was constitutional and that it defined the offense with sufficient particularity.

The case of *United States* v. *Monaghan, supra,* cited by petitioner at page 27 of her brief in support of her contention that Section 8 (e), as amended April 27, 1934, is unconstitutional, is not directly in point. As indicated above (*supra,* p. 42), Section 8 (e), as enacted on June 13, 1933, was the statute involved in that case and was there declared constitutional. While the court indicated that the omission in the amended Section 8 (e) of the words "in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act" made the statute indefinite, it was either dictum or a mere reference to the decisions of other courts. *United States* v. *Damon and Layton, supra,* held the amended statute unconstitutionally vague on this ground. This

result seems based upon a very strained construction of the statute. None could reasonably suppose that Section 8 (e) was designed to forbid the interdicted fees and charges when made in transactions unconnected with the loans or exchanges of the Corporation. Only by injecting this rather far-fetched doubt does the statute become indefinite as to the persons to whom it applies.

It results that Section 8 (e), after as well as before its amendment on April 27, 1934, is constitutional. Petitioner does not argue that Counts 12, 20, 24, and 25 do not charge offenses within the statute. It results that the conviction should be affirmed; since the sentences are concurrent, it is unnecessary to consider the constitutionality of Section 8 (a), under which petitioner was convicted on Counts 5 and 15. (See *supra*, p. 25.)

C. SECTION 8 (A) IS CONSTITUTIONAL

Counts 5 and 15 (R. 13–16; 31–34) in substance charge that the petitioner in executing mortgagees' consents to take bonds of the Home Owners' Loan Corporation in full settlement of her liens on the applicants' property and for the purpose of influencing the action of the Corporation upon loans, falsely stated that her claims were respectively in the sums of $590 and $650, with accrued interest for one year, whereas in fact her claims were respectively only in the sums of $285 and $150, and that petitioner knew that the amounts which she

stated were false. The indictment followed the words of Section 8 (a) of the Home Owners' Loan Act (*supra*, pp. 2–3).

It seems clear that Congress has full power to punish persons who make false statements for the purpose of influencing the action of the Corporation. Petitioner apparently does not deny this, nor does she assert that Section 8 (a) violates the requirements of due process because it is unduly vague. She seems, instead, to object because (1) it might penalize a trivial offense, and (2) the amount of the loan was not influenced by the misstatement (Br. 28–35). Neither objection is valid.

1. Petitioner (Br. 29) seeks to invoke in her behalf the maxim of *de minimis non curat lex*. But this doctrine has no application. This Court in *Frisbie* v. *United States*, 157 U. S. 160, at page 167, said:

> The question of the guilt of the defendant does not depend on the amount of the excess. The rule *de minimis non curat lex* has no such application in criminal cases. The stealing of one cent is larceny as truly as the stealing of a thousand dollars. The amount may vary the degree, but it does not change the character of the crime.

Whatever might be the result if the statute were applied in cases where the offense was "a trivial slip of tongue," or to a critic of the Corporation policies (Br. 28, 32), it is evident that no such case is presented here. Those cases may be dealt

with if they should ever arise. Here, petitioner, in connection with an application by her mortgagor for a loan, overvalued her second mortgage claims by 105 and 333 per cent, respectively.

We know of no reason why Congress may not punish false statements, whether or not made under oath. Since the statute requires knowledge that the statements are false, no dangers to persons accused under Section 8 (a) are to be anticipated because there is not a further qualification that the misstatements be material. Since petitioner *willfully* made false statements, she herself has made the decision as to their materiality. At any rate, petitioner adduces neither principle nor authority to support these contentions.

2. The argument that petitioner's misstatements would not influence the action of the Corporation similarly ignores the fact that petitioner was convicted of knowingly misstating the indebtedness due her (see R. 16, 34). Persons ordinarily do not make conscious misstatements with the expectation that there will be no consequences.

We see no necessity to follow petitioner's analysis of the safeguards of appraisal and title-searching which surrounded the Corporation loan, or to oppose to hers our estimate of the "nuisance value" of second mortgages (Br. 29–31). It is sufficient that the amount of the second mortgage would obviously be a factor, and probably an important factor, in the decision as to what amount

of Corporation bonds would be offered in exchange.

Section 8 (a) was sustained in *United States* v. *Willard, supra,* and in *United States* v. *Kreidler,* 11 F. Supp. 402 (S. D. Iowa). A similar provision in the Federal Farm Loan Act was upheld in *McLanahan* v. *United States,* 12 F. (2d) 263 (C. C. A. 7th).

It seems clear to us that Section 8 (a) is open to no constitutional objection. Petitioner makes no argument that Counts 5 and 15 do not charge an offense under this section. It results that the judgment of conviction should be affirmed; since the sentences were concurrent, this conclusion would make it unnecessary to consider the validity of Section 8 (e), either before or after its amendment on April 27, 1934. (See *supra,* p. 25.)

IV

There Is No Occasion to Consider the Remainder of the Act

We have shown that Sections 8 (a) and 8 (e) of the Home Owners' Loan Act, containing the penal provisions under which petitioner was convicted, are not unconstitutional in themselves. Petitioner, however, attacks as unconstitutional not only the penal provisions but the substantive provisions as well. The Government submits that the record in this case does not put in issue the constitutionality of the Home Owners' Loan Corporation. This results because (a) the penal provisions are sepa-

rable from the rest of the statute, because (b) petitioner has no standing to raise the constitutionality of provisions which do not affect her, or because (c) she is estopped to challenge the Act which provides the benefits she sought to obtain. These questions will be discussed in the indicated order.

A. THE PENAL PROVISIONS ARE SEPARABLE FROM THE REMAINDER OF THE ACT

Petitioner does not present an argument to the effect that the general provisions of the Home Owners' Loan Act creating the Corporation and prescribing its functions, are inseparable from the penal provisions (cf. Br. 25). Her discussion of the constitutionality of the Act as a whole is, however, necessarily based on the assumption that the general provisions are inseparably linked to the penal provisions, which alone are directly in issue in this case. The Government submits that this tacit premise is unfounded, and that the penal provisions are valid and operative irrespective of the constitutionality of the Home Owners' Loan Corporation as such.

The purpose of Sections 8 (a) and 8 (e), as shown on their face and by their legislative history,[17] is to protect the public funds from fraud

[17] The hearings and reports show the anxiety of Congress to reach every type of fraud which might be worked on the Corporation funds and upon those who dealt with it. See House Hearings on Guaranty of Home Owners' Loan Corporation Bonds (H. R. 8403), 73d Cong., 2d Sess., p. 56; H. Rep. No. 1075, 73d Cong., 2d Sess., p. 7; 78 Cong. Rec. 6129.

and to prevent exploitation of needy applicants who seek to borrow these funds.

Congress has power to protect the public Treasury against fraud, even though the offense may relate to an appropriation subsequently held unconstitutional. *Madden* v. *United States,* 80 F. (2d) 672 (C. C. A. 1st), certiorari denied, 297 U. S. 710; *Langer* v. *United States,* 76 F. (2d) 817 (C. C. A. 8th); *United States* v. *Harding,* 81 F. (2d) 563 (App. D. C.); *United States* v. *MacDonald,* 10 F. Supp. 948 (W. D. Mo.); *United States* v. *Schor,* 13 F. Supp. 399 (E. D. N. Y.); *United States* v. *M. C. Seelig and Mesch Construction & Equipment Corp.,* decided December 8, 1936 (S. D. N. Y.); *United States* v. *Soeder,* 10 F. Supp. 944 (W. D. Mo.).[18] Under the rule of these cases there could be no question as to the constitutionality of an independent statute punishing frauds upon any agency of the United States, and upon those who deal with it, whether or not the agency be constitutional. The question is thus reduced to whether Sections 8 (a) and 8 (e) can similarly be held to be valid irrespective of the constitutionality of the other provisions of the Act. The answer to this question turns upon the separability of this section from the remainder of the Act.

Whether Sections 8 (a) and 8 (e) are separable from the remainder of the statute depends upon

[18] The above cases have been discussed in the brief for the United States in *United States* v. *Kapp,* October Term, 1937, No. 97, pp. 13–20.

whether they "can be given legal effect" standing alone (*Lynch* v. *United States,* 292 U. S. 571, 586; *Dorchy* v. *Kansas,* 264 U. S. 286, 290), and upon the intention of Congress (*Carter* v. *Carter Coal Company,* 298 U. S. 238). The separability clause in the statute (Section 9, *infra*) raises a strong presumption in favor of separability. *Utah Power Co.* v. *Pfost,* 286 U. S. 165, 184–185; *Carter* v. *Carter Coal Company, supra,* 312–313.

1. The penalty provisions in Sections 8 (a) and 8 (e) of the Home Owners' Loan Act are entirely independent of the remainder of the Act, and can clearly be given legal effect by themselves. Persons can be punished for attempting to defraud the Corporation, or to exploit applicants, irrespective of whether its loans should ultimately be held to have been made without constitutional authority. The plain purpose of Sections 8 (a) and 8 (e) was not to enforce the substantive provisions of the statute, but to protect Government funds and borrowers while the law was being administered.

2. The remaining question is one of legislative intention.[19] It is undoubtedly true that Congress would not have enacted Sections 8 (a) and 8 (e), punishing frauds upon the Corporation and those

[19] The dissenting opinion of Chief Justice Hughes in *Carter* v. *Carter Coal Company,* 298 U. S. at 322, indicates that where there is a separability clause, and "where the provisions are inseparable by virtue of inherent character," the Court need not proceed further in attempting to imagine what Congress intended.

who dealt with it, if it had not passed the remainder of the statute, creating the Corporation. It is equally plain, on the other hand, that Congress intended Sections 8 (a) and 8 (e) to stand, once the Act became operative, regardless of the constitutionality of the other sections of the Act. Congress was obviously aware both that large sums would be immediately expended under the statute and that there could be no decision determining its constitutionality until long after it had become effective.

In none of the familiar cases on separability has this Court been called upon to differentiate between the willingness of Congress to enact a portion of a statute separately in the first instance and its intention as to whether the law should be severed once it had gone into effect. See Stern, *Separability and Separability Clauses,* 51 Harv. Law Rev. 76, 98. Accordingly, the general language of decisions such as the *Carter* case, suggesting (p. 313) that the appropriate test is what Congress would have done had it been proposed at the outset that a part only of the statute be enacted, must "be taken in connection with the case in which these expressions are used." *Cohens* v. *Virginia,* 6 Wheat. 264, 399; *Humphrey's Executor* v. *United States,* 295 U. S. 602, 627.

We do not believe there can be serious doubt as to the action of Congress had it felt called upon to vote on a proposal that frauds against the Corporation and those who dealt with it should be

punished even though the Corporation ultimately be held unconstitutional. Since this is so plainly the result which would have been desired by Congress, it must be taken to have intended that Sections 8 (a) and 8 (e) should stand whether or not the rest of the Act was held invalid. Such an intention seems to us to be the only one which reasonably can be attributed to Congress.

It follows that Sections 8 (a) and 8 (e) are separable from the rest of the Act. It results that petitioner's conviction should be affirmed without consideration of the broad constitutional questions she seeks to put in issue.

B. PETITIONER HAS NO STANDING TO ATTACK THE GENERAL PROVISIONS OF THE ACT

We have shown that the penal provisions, designed to protect the public funds and applicants for loans rather than to enforce the substantive provisions of the Act, are separable from the remainder of the Act. But, whether or not a decision as to separability be made, petitioner does not have the capacity to assail these general provisions unless she can show that she is affected by them.

1. The opposing argument would apparently have to be that provisions which are unconstitutional and inseparable make the statute void as a whole, so that it can be attacked by anyone to whom any inseparable part of it is applied. This argument mistakes the basis of the doctrine restricting

the capacity to raise constitutional questions. One who seeks to challenge a statute cannot, of course, gain a standing merely by showing that it is unconstitutional. No more does he gain a standing merely by showing that he is affected or injured by some other part of the statute. He must show that he is injured by the parts which he asserts to be unconstitutional if his complaint is to be heard. To say that one may challenge any inseparable part of the statute is to confuse the *effect* of a decision of unconstitutionality with the power to *invoke* a decision as to constitutionality. That power, as this Court has often held, is limited to those whose injury may be traced to the unconstitutional provision itself.

This rule has been applied whether or not the unconstitutional aspects of the statute are inseparably linked to those affecting the assailant. Thus, in *New York ex rel. Hatch* v. *Reardon,* 204 U. S. 152, 160, 161, this Court said that

> unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. * * * If the law is valid when confined

> to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails.

See also *Dillingham* v. *McLaughlin,* 264 U. S. 370, 374. Again, in *Yazoo and M. V. R. Co.* v. *Jackson Vinegar Co.,* 226 U. S. 217, Mr. Justice Van Devanter stated for the Court (pp. 219–220):

> Of course, the argument to sustain the contention is that, if the statute embraces cases such as are supposed, it is void as to them, and, if so void, is void *in toto.* But this court must deal with the case in hand and not with imaginary ones. It suffices, therefore, to hold that, as applied to cases like the present, the statute is valid. How the state court may apply it to other cases, whether its general words may be treated as more or less restrained, and how far parts of it may be sustained if others fail are matters upon which we need not speculate now.

This policy is equally applicable to Federal statutes, where the court is free to interpret the extent of their coverage. In *Heald* v. *District of Columbia,* 259 U. S. 114, it was held that a resident of the District of Columbia could not challenge a local taxing statute on the ground that it was invalid as applied to non-residents. The District argued that the provisions assailed were severable. But the Court did not stop to determine whether or not they were separable, and instead ruled that the

taxpayer had not shown that he was "within the class of persons with respect to whom the act is unconstitutional" (p. 123). And in *Virginian Railway Co.* v. *Federation,* 300 U. S. 515, the employer was held unable to attack a provision, which was applied to it, on the ground that it violated the constitutional immunity of its employees, although it is obvious that, the same provision being involved, it could not be argued to have separable application to the employer and to the employees. See, to the same effect, *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576; *Rail Coal Co.* v. *Ohio Industrial Commission,* 236 U. S. 338, 349; cf. *Erie R. R. Co.* v. *Williams,* 233 U. S. 685, 705.

2. It follows that, whether or not Sections 8 (a) and 8 (e) are separable from the general provisions of the Act, or even if they should be held inseparable, the Court must consider whether petitioner has a standing to challenge these latter provisions. We think it plain that petitioner can show no injury from any part of the Act other than the penal provisions designed to protect the public funds and the applicants for loans. Accordingly, she is without power to question the other provisions.

The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he personally has been or will be injured by its operation. See, e. g., *Henderson* v. *Tennessee,* 10 How. 311, 323; *Tyler* v. *The Judges,* 179 U. S.

405; *McCabe* v. *Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 162; *Hendrick* v. *Maryland*, 235 U. S. 610, 621; *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-Op. Assn.*, 276 U. S. 71, 88. And even if a statute is applied to the assailant, he cannot question its validity unless he is affected by the unconstitutional feature of the statute. "As they do not belong to the class for whose sake the constitutional protection would be given, if it would, they cannot complain on that ground." *Darnell* v. *Indiana*, 226 U. S. 390, 398.

Familiar application of the latter principle is found in decisions refusing to consider whether a statute violates the equal protection clause at the instance of one who is clearly not a member of the class allegedly discriminated against, see e. g., *Cronin* v. *Adams*, 192 U. S. 108, 114; *Morf* v. *Bingaman*, 298 U. S. 407, 413, or who fails affirmatively to show that he is a member of the class discriminated against, see e. g., *Standard Stock Food Co.* v. *Wright*, 225 U. S. 540, 550; *Bosley* v. *McLaughlin*, 236 U.S. 385, 395. The requirements of the due process clause as applied to others will not be investigated at the behest of one whose property is not arbitrarily taken, see *Aetna Ins. Co.* v. *Hyde*, 275 U. S. 440, 447, 448, or who has been excepted from the operation of the provision assailed for vagueness, see *Gorieb* v. *Fox*, 274 U. S. 603, 606. The interstate commerce clause provides no shelter where the transaction at bar is intrastate, see *New*

York ex rel. Hatch v. *Reardon*, 204 U. S. 152, 160; *Missouri, Kan. & Tex. Ry. Co. of Texas* v. *Cade*, 233 U. S. 642, 648. An employer may not advance the constitutional immunity of his employees, *Jeffrey Mfg. Co.* v. *Blagg*, 235 U. S. 571, 576; *Virginian Ry.* v. *Federation*, 300 U. S. 515, 558. The doctrine applies to Federal statutes as well as State acts, *Blair* v. *United States*, 250 U. S. 273, 279; *Heald* v. *District of Columbia*, 259 U. S. 114, 123; *Virginian Ry.* v. *Federation, supra.*

Petitioner does not and cannot demonstrate that the operations of the Home Owners' Loan Corporation caused her direct and personal harm, or threatened so to do. When the Corporation issued bonds, when it advanced cash to home owners, when it distributed its bonds to mortgagees willing to accept them in lieu of their lien and the home owner's promise, petitioner was not in any way interested or affected. She therefore has no standing to attack the constitutionality of the substantive provisions of the Act.

C. PETITIONER IS ESTOPPED TO ATTACK THE REMAINDER OF THE ACT

Irrespective of the questions of separability and standing to complain, the petitioner is estopped to attack the parts of the statute under which she sought to obtain benefits.[20]

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[20] This argument is also covered in the Government's brief in *United States* v. *Kapp*, No. 97, this Term, pp. 25–30.

Counts five and fifteen of the indictment charged that petitioner filed with the Home Owners' Loan Corporation a consent to take bonds of the Corporation as a refunding of her mortgage lien (R. 14–15; 32–33). By filing these consents, petitioner took appropriate steps under the statute for the purpose of obtaining a benefit; the exchange of her mortgage notes for the corporation bonds, which bore the promise of a financially responsible party and were guaranteed by the Government. By taking such action in quest of benefits under the statute, petitioner has estopped herself from attacking it.

Apart from the rule that one may not both rely upon and assail an enactment in the same proceeding, *Hurley* v. *Commission of Fisheries*, 257 U. S. 223, 225, it is well settled that one who has availed himself of the benefits of a statute is estopped to question its constitutionality. *Daniels* v. *Tearney*, 102 U. S. 415, 421; *Grand Rapids & Indiana Ry. Co.* v. *Osborn*, 193 U. S. 17, 29; *Kansas City &c. R. Co.* v. *Stiles*, 242 U. S. 111, 117; *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125, 128–129; *St. Louis Co.* v. *Prendergast Co.*, 260 U. S. 469, 472–473; cf. *Eliason* v. *Wilborn*, 281 U. S. 457, 459–460. It does not appear that petitioner actually received benefits (the bonds of the Corporation), but the doctrine of estoppel applies equally to one who has taken action under the statute in quest of such benefits. *Great Falls Mfg. Co.* v. *Attorney Gen-*

eral, 124 U. S. 581, 598–600; *Wall* v. *Parrot Silver & Copper Co.*, 244 U. S. 407, 411–412; *United Gas Co.* v. *Railroad Comm.*, 278 U. S. 300, 307–308; cf. *Booth Fisheries* v. *Industrial Comm.*, 271 U. S. 208.

In both the *Great Falls Mfg. Co.* and *Wall* cases a party who had instituted a proceeding prescribed by statute for the determination of damages suffered from the loss of property rights was held unable to maintain a separate suit attacking the constitutional sufficiency of the statutory procedure to provide adequate remuneration, though the proceedings had not yet culminated in an award, and no benefits had been received. In the *United Gas Co.* case, because a gas company had petitioned a state commission to establish higher rates or permit withdrawal from service, it was held unable, in a suit to set aside the commission's order denying it relief, to assail the statute creating the commission, or the statute prohibiting any public service company which had continued its service after the expiration of its franchise partially to withdraw from such service without permission of the commission.

It is true that, in permitting one who has applied under a statute for a license to do business to have its enforcement enjoined on the ground that a license could not constitutionally be required, this Court has pointed out that it is unsound to say that "one who invokes the provisions of a law may not thereafter question its constitutionality." *Buck* v.

Kuykendall, 267 U. S. 307, 316; see also *City of Newark v. Central R. Co. of New Jersey,* 267 U. S. 377, 385. But a licensing statute is open to the distinction that it merely delimits the freedom to engage in business, with the result that the application for a license is not intended to secure any benefits and does not contemplate a more advantageous situation than that which existed before the passage of the Act. Where one has invoked the statute in an attempt to obtain manifest benefits, the estoppel doctrine applies.

On principle as well as authority it seems that a party should not be able to assume inconsistent positions, first to rely on a statute and later to assail it, even though he has failed to secure the benefits which he sought under the statute.[21] It is believed that the correct doctrine is that stated in the

[21] The power to claim a constitutional right may be barred "by deliberate election or by conduct inconsistent with the assertion of such a right." *Pierce Oil Co.* v. *Phoenix Refining Co.*, 259 U. S. 125, 128–129.

In *Great Falls Mfg. Co.* v. *Attorney General*, 124 U. S. 581, the Court emphasized the inconsistency of the corporation's position: it had previously acquiesced in the taking of the property, and the procedure before the Court of Claims; it could not now bring a suit proceeding on the ground that there had been no lawful taking (pp. 598, 600). The Court stated that the corporation should have stood upon its constitutional rights in the first place, if it desired to urge them (p. 600). In *Wall* v. *Parrot Silver & Cooper Co.*, 244 U. S. 407, the Court stated (p. 412): "They cannot claim the benefit of statutes and *afterwards* successfully assert their invalidity." [Italics added.]

more recent decision of *United Gas Co.* v. *Railroad Commission,* 278 U. S. 300, 307–308:

> It is the rule of this Court, consistently applied, that one who has invoked action by state courts or authorities under state statutes may not later, when dissatisfied with the result, assail their action on the theory that the statutes under which the action was taken offend against the Constitution of the United States. * * *

None of the other factors in the instant case precludes the application of the doctrine of estoppel. It applies to Federal as well as State statutes. *Great Falls Mfg. Co.* v. *Attorney General,* 124 U. S. 581; *American Bond & Mortgage Co.* v. *United States,* 52 F. (2d) 318, 321 (C. C. A. 7th); see *Hirsh* v. *Block,* 267 Fed. 614, 618 (App. D. C.), reversed on another ground, 256 U. S. 135; cf. *Humbird* v. *Avery,* 195 U. S. 480. We see no reason why the doctrine should not apply in a criminal prosecution, where the defendant has accepted the benefits of or invoked the statute, as well as in a civil proceeding.[22] See *Kluczek* v. *State,* 115 N. J. L. 105, 111; *Ingles* v. *People,* 90 Colo. 51, 56–57; *Jannett* v. *Windham,* 109 Fla. 129, 130[23]; *State* v. *Stone,* 46 La. Ann. 147, 150.

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[22] In addition may be cited several criminal cases precluding a defendant from relying on and assailing the statute in the same proceeding. *Hunt* v. *State,* 186 Ind. 644; *State* v. *Collins,* 225 Mo. 633; *Ayers* v. *Newark,* 49 N. J. L. 170; *State* v. *Board of Police Com'rs,* 56 N. J. L. 258.

[23] In rehearing, as an alternative ground of decision, the State court examined the statute and held it consonant with

It should be noted that we do not argue that petitioner is estopped to challenge the validity of Sections 8 (a) and 8 (e), under which she was convicted. We urge only that the rule announced in these cases precludes petitioner from assailing the other provisions of the statute, under which she has sought to obtain benefits. Compare *State* v. *Stone, supra.*

V

The Home Owners' Loan Corporation Is Constitutional

In our view of the issues presented by this case, the constitutionality of the Home Owners' Loan Corporation may not be considered by this Court. However, since the court below examined the constitutional questions, we shall present a discussion designed to demonstrate that the Corporation served to carry out (1) the fiscal powers of Congress and (2) the power of Congress to impose taxes and appropriate money to provide for the general welfare.

A. INTRODUCTORY

1. *The Occasion for the Act.*—The Home Owners' Loan Corporation was designed to afford an opportunity for the necessitous urban home owner, who occupied his own home, to refinance his mortgage indebtedness. We think it important to

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the Federal Constitution, and on this ground the judgment was affirmed, 290 U. S. 602.

sketch the economic conditions which led to its creation.

Debts secured by liens upon real estate (hereafter called mortgage debts) form the major part of the long term non-governmental indebtedness of the nation. It was estimated in 1934 that of the $74,900,000,000 outstanding debt of this nature, $38,200,000,000, or 51 per cent, represented mortgage debts of various kinds. Of this latter amount, $17,700,000,000 was estimated to be represented by mortgages on urban homes (dwellings for one to four families); this is 46 per cent of the mortgage debt, and 24 per cent of the total non-governmental debt.[24]

The distribution of urban home mortgages among the various types of lenders in 1933 may roughly be taken to be as follows:[25]

Savings banks and trust companies	21%
Individuals	20%
Commercial banks	17%
Life insurance companies	16%
Building and loan associations	14%
Mortgage companies	7%
Others	5%

[24] The figures in this paragraph are taken from Long-Term Debts in the United States Department of Commerce, Bureau of Foreign and Domestic Commerce (1937), p. 6. The data relate to 1934, since there is no equally reliable estimate for 1933, when the Corporation was created, but they should serve to give a substantially accurate picture of the amount and relative importance of urban home mortgages in the preceding year.

[25] This table is taken from Financial Survey of Urban Housing, Department of Commerce (1937), p. xix. This table embraces data covering 52 cities on January 1, 1934. The 3.3 per cent holding of the H. O. L. C., shown by the table, was distributed by us proportionately among the other

The tremendous investment in home mortgages represented a borrowing of corresponding importance to the home owners of the nation. In 1930 there were about 23,200,000 non-farm homes in the United States, of which about 11,500,000 were occupied by the owner.[26] Of the owner-occupied urban homes, about 58 per cent were mortgaged in 1933, the indebtedness averaging about 56 per cent of the value of the mortgaged property.[27] These mortgaged homes which are occupied by the owners house a total of about 23,000,000 persons,[28] constituting about 19 per cent of the total population.[29]

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classifications to reflect the situation in 1933. The table itself gives results for the above classifications of, respectively, 20.4, 19.7, 16.5, 15.0, 13.6, 7.1, and 4.4 per cent. See also the estimates found in Long-Term Debts in the United States, Dept. of Commerce (1937), p. 140; Senate Hearings on the National Housing Act (S. 3603), 73d Cong., 2d Sess., p. 20.

[26] Abstract of the Fifteenth Census, Dept. of Commerce (1933), p. 405, gives the respective figures as 23,235,982 and 10,503,386.

[27] Financial Survey of Urban Housing, Dept. of Commerce (1937), p. xviii, gives the respective figures for January 1, 1934, as 58.3 and 55.6 per cent. This survey is based upon a thorough canvass in 52 typical cities distributed throughout the country. The cities comprise a group of somewhat larger than average size and the result probably shows a larger percentage of debt than would a complete survey of all urban communities.

[28] The Fifteenth Census, Dept. of Commerce, Vol. VI, "Families," Table 20, p. 14, indicates an average of 3.82 persons per urban family in 1930. This figure, multiplied by 58 per cent of 10,500,000 or 6,090,000, gives 23,263,800.

[29] The total population was 122,775,046 in 1930 (Abstract of the Fifteenth Census, Dept. of Commerce, p. 10).

It is evident that the solvency of the financial institutions and the housing of an important fraction of the population were alike intimately dependent upon the maintenance of a tolerably healthy mortgage investment field. Yet the volume of foreclosures was mounting at an alarming rate. During 1926, which may be taken as a typical year, an estimated 68,100 homes were foreclosed in the United States. During 1932 this figure had increased to 248,700. By June of 1933 foreclosures were occurring at an estimated rate of 24,000 a month.[30] When it is remembered that many mortgagees refused to foreclose in spite of the borrower's default because of the low value of real estate generally, these figures are seen considerably to understate the actual number of home mortgages seriously in default.

The only comprehensive survey of urban home mortgage defaults[31] indicates that, of the urban

[30] The figures in this paragraph are largely taken from H. O. L. C. Summary of July 22, 1936. They are estimates made by the Federal Home Loan Bank Board based upon reports of local officers in over 1,000 communities (including over half of the population). Published figures, averaging about 8 per cent higher than these revised data, may be found in the House Hearings on the National Housing Act (H. R. 9620), 73d Cong., 2d Sess., p. 63. Monthly figures in 1933 are taken from the Hearings and adjusted by us.

[31] Financial Survey of Urban Housing (Dept. of Commerce, 1937). The study covers 22 typical cities (ranging in size from Casper, Wyoming, to Cleveland, Ohio, and in location from Portland, Maine, to San Diego, California)

homes on which there was a first mortgage and which was occupied by the owner, 43.8 per cent were in default.[32] The average period of back payments in which the defaulting mortgagor was in arrears was 15 months.[33] The situation with respect to second and third mortgages was even worse; 54.4 per cent of the urban homes occupied by their owners and subject to second or third mortgages were in default,[34] and were in arrears

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and relates to January 1, 1934. While it does not, of course, show the national picture with complete accuracy, there is no reason to believe the results are not typical.

[32] The figure is our own computation and is derived from Tables 36 and 40 (repeated for each city) in the Financial Survey of Urban Housing. Tables 36 cover owner-occupied homes on which there is a first mortgage or trust deed, and Tables 40 cover such homes on which there is a purchase agreement lien. If these tables be totalled, they indicate that of 48,197 reporting mortgagors, 21,103 were in default. The resulting 43.8 per cent default may be compared with the 46.9 per cent of rented houses subject to similar liens which were in default (Tables 37 and 41; 9,045 reporting, 4,238 in default).

[33] Tables 36 and 40 of the Survey give the average period for each city. These figures were averaged, weighting them according to the number of defaults in each city, to give a national figure. The average of 15 months may be compared with the average of 16 months arrears in the case of mortgage defaults on rented houses (Tables 37 and 41, similarly computed).

[34] Tables 38 of the Survey give a total of 4,855 such homes which reported, of which 2,640 were in default. The resulting figure of 54.4 percent may be compared to the 64.2 percent of rented houses subject to such mortgages which were in default (Tables 39; 494 reporting, 317 in default).

an average of 18 months.[35] In result, it may be said that almost half of the urban home owners whose property was mortgaged were in serious default in their payments.[36] This meant that about one-fourth of the urban home owners in the country were in greater or less danger of losing their homes. The gravity of such a crisis needs no characterization.

A considerable measure of relief had been extended to the institutional mortgagees through the establishment of the Federal Home Loan Bank System in 1932. The Act of July 22, 1932, c. 522, 47 Stat. 725, established a system of 8 to 12 Federal Home Loan Banks, under supervision of the Federal Home Loan Bank Board. Building and loan associations, cooperative banks, savings banks, and insurance companies were eligible for membership in the system. The Banks were to make loans on notes secured by first mortgages on urban homes. By June 1, 1933, the Banks had extended $132,937,197 of credit to their member institutions.[37]

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[35] Tables 39 of the Survey give the average period for each city. These figures were average, weighting them according to the number of defaults in each city, to give the national figure. The average of 18 months may be compared with the average of 19 months arrears in the case of such defaults on rented houses (Tables 39, similarly computed).

[36] It is to be noted that these figures do not include the 3.3 per cent of urban mortgages held by the H. O. L. C., most of which were probably in default in 1933 (See footnote 24, *supra*).

[37] First Annual Report of Federal Home Loan Bank Board, p. 16.

It will be observed that the Home Loan Bank System assisted in maintaining the solvency of institutional mortgagees which possessed sound mortgage investments but were in need of cash. It was essentially a means for establishing liquidity by means of a central bank of discount. However, the relief afforded by the Home Loan Bank system was obviously inadequate to meet the needs of the continuing crisis. (1) It offered no relief to the mortgagor who was in default.[38] (2) It did little to stem the tide of foreclosures, since it contained no provision which might deter the mortgagee from foreclosing on defaulted loans. (3) Since the volume of foreclosures continued unabated, the distress sales of urban realty continued without check, steadily driving down the value of the realty securing other mortgage loans. This weakened the security back of the loans by institutional mortgages, thus jeopardizing their basic solvency and making maintenance of liquidity more difficult through reducing the volume of paper eligible for rediscount by the Home Loan Bank system. (4) The shrinking real estate values made refinancing by the home owner virtually impossible, even though he had repaid much of the principal of the loan, and by a cumulative process led to further foreclosures and

[38] Section 4 (d) purported to permit loans to individual home owners unable to borrow elsewhere. But of 41,000 applications, only 3 loans were granted under the severe restrictions of the Act and Regulations. H. O. L. C., Purposes and Accomplishments (1936), p. 2.

a further diminution in the market value of urban real estate.

The Home Owners' Loan Act of 1933 was thus designed to supplement the Home Loan Bank System and to provide a partial remedy for this growing tide of mortgage defaults and foreclosures, which was impairing the solvency of the financial institutions of the nation and threatening to cause loss of their home ownership by hundreds of thousands of its citizens.[39]

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[39] Other measures were adopted during the depression years to remedy the urban home mortgage crisis. They include the following: (1) A system of Federally incorporated and supervised savings and loan associations was established. Act of June 13, 1933, c. 64, 48 Stat. 128, amended by Acts of April 27, 1934, c. 168, 48 Stat. 643, and of May 28, 1935, c. 150, 49 Stat. 293. Some 1,135 associations, with assets of $657,534,365 had been chartered on June 30, 1936. Fourth Annual Report of Home Loan Bank Board, p. 27. (2) A Federal Savings and Loan Insurance Corporation, designed to insure the shares and accounts of Federal savings and loan associations, and of state associations which met the requirements, was established. Act of June 27, 1934, Title V of c. 847, 48 Stat. 1246, amended by Act of May 28, 1935, c. 150, 49 Stat. 293. The Corporation on June 30, 1936, had, in addition to the Federal associations, 237 state incorporated members and assets of $104,362,011.84. Fourth Annual Report of Home Loan Bank Board, pp. 46, 47. (3) The Federal Housing Administration was established, whose chief functions were to insure, after appraisal, private loans for (a) repair and modernization of homes and other buildings, (b) long term mortgage loans on homes, and (c) mortgage loans on large scale housing projects. Act of June 27, 1934, 48 Stat. 1246, amended by Acts of May 28, 1935, c. 150, 49 Stat. 293, of August 23, 1935, c. 614, 49 Stat. 684, of April 3, 1936, c. 165, 49 Stat. 1187, and of April 17,

2. *The Terms of the Act.*—The Home Owners' Loan Act of June 13, 1933 (c. 64, 48 Stat. 128), provided in Section 4 for the creation of the Home Owners' Loan Corporation. The provisions of this section as originally enacted may be summarized as follows:[40]

The Federal Home Loan Bank Board was to create the Corporation, and the members of the Board were to serve as directors. (Subd. (a).) Its capital stock, not to exceed $200,000,000 was to be determined by the Board and subscribed by the Secretary of the Treasury on behalf of the United States. (Subd. (b).) The Corporation was authorized to issue bonds in an amount not to exceed $2,000,000,000, to be guaranteed as to interest by the United States, for terms of not more than 18 years. The bonds were to be tax-exempt, as was all property of the Corporation except its real estate. (Subd. (c).)

During a period of three years after the enactment, the Corporation was authorized to exchange its bonds for mortgages on urban homes. The homes must have been occupied by the owner, and of a value of less than $20,000. No more than

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1936, c. 234, 49 Stat. 1232. By the end of 1936 a total of $1,139,335,659 in notes and mortgages had been accepted for insurance, distributed in the above types as follows: (a) $500,220,642, (b) $609,044,017, and (c) $30,071,000. Third Annual Report of Federal Housing Administration, p. 7.

[40] The full text of the relevant sections of the Act, as subsequently amended, is found in the Appendix, *infra*, pp. 104–120.

$14,000, or an amount equal to 80 per cent of the value of the real estate, was to be offered in any one case. The Corporation also could advance cash to meet the incidental expenses of the transaction, to pay taxes and to provide for necessary maintenance and repairs. The mortgages so acquired by the Corporation were to be amortized within a period of 15 years, and interest was not to exceed 5 per cent. (Subd. (d).)

The Corporation also could make cash loans, up to 50 per cent of the value of the property, when secured by a first mortgage such as that described above (Subd. (e)). When a mortgagee refused to accept the Corporation bonds, and the home owner could not borrow elsewhere, the corporation was empowered to advance not over 40 per cent of the value of the property for the purposes specified in subdivision (d), to be secured by a first mortgage (Subd. (f)). It was further authorized to exchange bonds and to advance cash to enable the owners to redeem homes foreclosed within the preceding two years (Subd. (g)). All powers specified in this paragraph could be exercised only within three years of the enactment of the Act.

The Corporation was directed to retire its bonds and capital stock as rapidly as possible. On approval of the Board it could pay dividends on the stock. Any surplus after liquidation was to be paid into the Treasury (Subd. (h)).

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By the Act of April 27, 1934, (c. 168, 48 Stat. 643) the original Act was amended (Sec. 1) to provide that the bonds should be guaranteed by the United States as to principal as well as to interest. Section 2 added new subdivisions to the original Section 4 which required that relief be offered only to mortgagors shown to be necessitous, or where the mortgages were held by an institution in liquidation (Subd. (l)), and which authorized the Corporation to make cash advances (up to $200,000,000) and exchange bonds for the rehabilitation and modernization of the homes and real estate financed (Subd. (m)). Owners whose homes were foreclosed subsequent to January 1, 1930, were made eligible for loans for the purpose of redemption (Sec. 4). The Federal Reserve Banks were authorized to rediscount member bank paper secured by bonds of the Corporation, directly to purchase these bonds, and to act as fiscal agents of the Corporation (Secs. 7, 8). The Corporation was authorized to purchase up to $50,000,000 of the bonds of the Federal Home Loan Banks (Sec. 9).

By the Act of June 27, 1934 (c. 847, 48 Stat. 1246, 1256, 1263–1264), the Corporation was directed in Section 402 (b) to subscribe $100,000,000 for the entire capital stock of the Federal Savings and Loan Insurance Corporation. By Section 506 the amount of bonds which the Corporation was authorized to issue was increased to $3,000,000,000, and the amount available for cash advances for

rehabilitation and modernization was increased to $300,000,000. By the Act of May 28, 1935 (Secs. 11, 16, c. 150, 49 Stat. 293), these amounts were increased, respectively, to $4,750,000,000 and $400,000,000, and a new subdivision (n) added to the original Section 4, authorizing the purchase up to $300,000,000 of Federal Home Loan Bank bonds and the shares of Federal savings and loan associations and members of the Home Loan Bank System. The preferred status accorded institutional mortgagees in liquidation was withdrawn (Sec. 14.)

3. *Operations of the Corporation.*—The lending operations of the Corporation were limited to three years from the enactment of the Home Owners' Loan Act, and terminated on June 13, 1936. In this period it issued bonds (excluding refunding) in the amount of $3,048,369,550.[41] Applications for refinancing and reconditioning loans were received from 1,886,491 home owners, totalling $6,173,355,625. An aggregate amount of $3,093,288,213 was granted to 1,018,171 applicants. Homes were refinanced in every State, ranging in volume from 1,206 homes in Nevada to 98,557 in Ohio, and in Alaska, Hawaii, Puerto Rico, and the District of Columbia. The loans averaged $3,028 in amount.[42]

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[41] Fourth Annual Report of Federal Home Loan Bank Board, p. 127.

[42] These figures are taken from Final Summary of Financing Operations, H. O. L. C., Dec. 4, 1936.

The loans bear 5 per cent interest and most of them are repayable in equal monthly installments of $7.91 per $1,000 of original loan for a period of 15 years.[43] The Corporation bonds have been exchanged with mortgagees who have surrendered obligations of a face value averaging about 8 per cent above that of the Corporation bonds, and bearing interest rates averaging over 6 per cent.[44]

In consequence of these operations, the Corporation has acquired about one-sixth of the urban home mortgage debt of the nation. It has been estimated that one out of every ten homes occupied by their owners has been refinanced through a mortgage to the Corporation.[45]

The rapidly accelerating rate of urban foreclosures was checked in the latter part of 1933, following the creation of the Corporation. Urban home

[43] Fourth Annual Report of Federal Home Loan Bank Board, p. 30.

[44] *The Final Summary of Financing Operations*, H. O. L. C., Dec. 4, 1936, states that the average amount of the application was $3,272 and the average value of the loan granted was $3,028. We are informed that this is a reasonably accurate, and the best available measure of the reduction in principal effected on the exchange. The estimate of the interest rate on the exchanged mortgages is taken from H. O. L. C., *Purposes and Accomplishments*, p. 7. *Financial Survey of Urban Housing*, Dept. of Commerce (1937), p. xviii, indicates an average contract rate of 6.18 per cent in the 52 cities surveyed.

[45] H. O. L. C., *Purposes and Accomplishments*, p. 5; *Long Term Debts in the United States*, U. S. Dept. Commerce, Bureau of Foreign and Domestic Commerce, 1937, p. 143.

mortgage foreclosures, estimated at 24,000 in June 1933, dropped to about 20,700 in July and to about 19,200 in August of 1933.[46] The decline in home mortgage foreclosures in metropolitan communities was even more abrupt.[47] By the end of the lending life of the Corporation, in June 1936, the estimated total of urban homes foreclosed had declined to 15,716 in June of 1936.[48] While not all of this improvement can be said to be due to the Corporation alone, the importance of its aid is evident.

It is apparent that the Corporation played a very significant role in alleviating the condition of financial institutions during the crisis of 1933 and that its refinancing of home mortgages eliminated the most calamitous aspect of the economic depression, the danger of eviction from their homes, for over a million hard-pressed home owners. The Government submits that this activity was clearly within the constitutional powers of the Federal Government. Such has been the decision of every court which has considered the question.[49]

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[46] H. O. L. C. Summary of, July 22, 1936. See footnote 29, *supra*.

[47] *Long-term Debts in the United States*, Dept. of Commerce, Bureau of Foreign and Domestic Commerce (1937), p. 147.

[48] *Monthly Estimated Number of Non-Farm Real Estate Foreclosures*, H. O. L. C., Nov. 25, 1936.

[49] In addition to the decision of the court below, the following cases and opinions have upheld the constitutionality of the H. O. L. C.: *United States ex rel. Handler* v. *Hill*, 90

B. THE ACT IS A CONSTITUTIONAL EXERCISE OF THE FISCAL POWERS

The history of Federal financial institutions and fiscal agencies is almost as long as that of the central Government itself. The mere names of these

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F. (2d) 573 (C. C. A. 3d), certiorari denied because filed too late, No. 416, October Term, 1937, holding that the power to make loans includes the power to forbid fees for securing them; *Home Owners Loan Corporation* v. *Gregory* (S. Ct. of Tenn., not yet reported, decided June 17, 1937), granting a writ of eviction after foreclosure; *Home Owners Loan Corporation* v. *Megliola* (Mun. Ct., W. Roxbury, Mass., decided May 21, 1937), mortgagor also held estopped to challenge validity; *Home Owners Loan Corporation* v. *Sapin* (App. Dept., S. Ct., Los Angeles County, Cal., decided August 31, 1937); *Home Owners Loan Corporation* v. *Hudson* (S. Ct. Los Angeles County, Cal., decided March 18, 1937); 37 Op. A. G. 241, sustaining the validity of the H. O. L. C. and its bonds; see also Opinion of Attorney General to the President, August 26, 1935, 38 Op. A. G. —, sustaining the validity of the National Housing Act.

Other cases have reached conclusions based upon the decision that the H. O. L. C. is an instrumentality of the United States. It is not a "foreign corporation." *Home Owners Loan Corporation* v. *Shapiro* (C. Ct., Essex County, N. J.). It need not pay a "writ tax" to maintain suit. *Home Owners Loan Corporation* v. *Rebman* (L. & E. Ct., Richmond, Va., decided June 24, 1937). It cannot be garnisheed. *Home Owners Loan Corporation* v. *Hardie & Candle*, 100 S. W. (2d) 238 (Tenn.); *Malitz* v. *Freed* (Ct. App., Cuyahoga County, Ohio, decided June 29, 1935); *Donefeld's, Inc.* v. *Caulfield* (Ct. C. P., Miami County, Ohio, decided December 1936); *McLaughlin* v. *Bellew* (C. Ct., Kenty County, Mich., decided February 28, 1937); cf. *Gill* v. *Reese*, 53 Ohio App. 134, 137, holding that the H. O. L. C. can be garnisheed although "there can be no question but that the corporation is an instrumentality of the government, engaged in a great undertaking affecting the public."

institutions summon to mind the historic periods and crises of the nation: in 1816 the Bank of the United States, in 1863 the National Banking Associations, in 1913 the Federal Reserve System, in 1916 the Federal Land Bank System, in 1917 the War Finance Corporation, in 1932 the Reconstruction Finance Corporation and the Federal Home Loan Bank System, and in 1933 the Federal Deposit Insurance Corporation. The Government submits that the Home Owners' Loan Corporation, designed as it is to preserve the solvency of financial institutions and to support the credit structure of the nation, was merely another step in this continuing protection and support which the United States offers the credit mechanism through which all activities, whether private, State, or Federal, in this day must proceed.[50]

We think it probably unnecessary precisely to trace the causal lines which flow from the functions of the Home Owners' Loan Corporation and thereby to demonstrate its exercise of the fiscal powers granted in Section 8 of Article I. For this Court has aptly characterized the sweeping reach of combined federal powers to regulate the currency, to

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[50] The recognized fact that over 90 per cent, by dollar volume, of all transactions are made by means of check (see, e. g., Hearings on Banking Bill of 1935 (H. R. 5357), 74th Cong., 1st Sess., p. 213) seems of itself to be ample documentation of the fact that maintenance of credit institutions is indispensable to the federal powers to regulate currency, to borrow and to tax.

borrow and to tax. In *Norman* v. *Baltimore & Ohio R. Co.*, 294 U. S. 240, 303, it said:

> The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress.

These powers, it must further be noted, are "not stereotyped as of any particular time" but furnish "a perpetual and living sanction" to Congress to consider "the changing wants and demands of society and to adopt provisions appropriate to meet every situation which it was deemed required to be provided for." *First National Bank* v. *Union Trust Co.*, 244 U. S. 416, 419.

Given the broad and flexible fiscal powers, given the importance of urban mortgage credit to the banking system, and given the distressed condition of the urban mortgage market, we think there need be no further inquiry as to the constitutionality of the Home Owners' Loan Corporation. But, to err on the side of caution, the succeeding pages of this section are designed more precisely to demonstrate that the Corporation is (1) an important adjunct of the Federal Home Loan Bank System, the constitutionality of which is not disputed, and (2) a valid fiscal agency, even apart from its relationship to this System.

1. *An Adjunct of the Home Loan Bank System.*—Petitioner apparently concedes the constitutionality of the Federal Home Loan Bank Sys-

tem (Br. 13–18, 17). Indeed, there hardly could be a substantial question on this score in view of the close analogy the Home Loan Bank System bears to the Federal Farm Loan System, upheld in *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180. It is our view that the Home Owners' Loan Corporation is a necessary or appropriate adjunct to the Home Loan Bank System during a time of financial crisis, and that the undisputed constitutionality of the latter necessarily covers the Corporation as well.

It is significant that it was recognized from the outset that direct relief to the home owner was an aid in the successful operation of the Home Loan Bank System. Section 4 (d) of the Federal Home Loan Act (c. 522, 47 Stat. 725) contained a provision designed to permit direct relief to home owners, but this was found inadequate in practice (see footnote 38, *supra*, p. 70). Section 4 of the Home Owners' Loan Act, directing the creation of the Corporation, whose directors were to be the members of the Federal Home Loan Bank Board, was designed to afford a practicable and large scale substitute for the earlier Section 4 (d), which accordingly was repealed (Section 3, c. 64, 48 Stat. 128).

It requires, we believe, no argument to demonstrate that a Federal banking system designed to preserve the liquidity and solvency of financial institutions which lend on mortgage notes cannot suc-

cessfully operate so long as the underlying mortgage collateral is unsound or in default. In a period of widespread default and foreclosure, with the resulting distress sale of real property which in turn forces down the value of the collateral behind other notes, there can be no satisfactory means of preserving the institutional mortgages which does not serve also to mitigate the distress of the mortgagor. The possibility of obtaining cash advances on acceptable mortgage notes is an illusory or, at most, but a temporary salvation for institutions which see an ever increasing number of their borrowers go into default, and for whom foreclosure cannot afford relief because of the low values to which the real estate had been driven. The privilege of rediscount is a palliative only, and is, moreover, one which in times of prolonged economic depression becomes of steadily diminishing utility.[51]

It seems necessarily to follow, since Congress can constitutionally offer liquidity to institutional mortgagees, that as an auxiliary to that activity it

[51] The experience of the Reconstruction Finance Corporation offers an illuminating parallel. Its authority to make loans to financial institutions, contained in the original Act (c. 8, Sec. 5, 47 Stat. 5), was found to be only partially effective in relieving the threatened insolvency of these institutions, with the result that direct subscription to preferred stock was found desirable (c. 1, Sec. 304, 48 Stat. 1). See statements of Jesse H. Jones, Chairman of R. F. C., reprinted in Cong. Rec., Vol. 81, p. 9766 (daily ed., July 23, 1937); Cong. Rec., pt. 9, App., p. 115; New York Times, Sept. 6, 1933, p. 38, col. 3.

can reach into the economic situation which created the necessity for the Home Loan Bank System and establish a subsidiary for financing mortgagors, thus averting defaults upon such a wide scale that the privilege of rediscount might become meaningless. The Home Owners' Loan Corporation, accordingly, represents a direct attack upon the conditions which made the Home Loan Bank System imperative, and should be viewed as a buttress to support the operations of that System.

In addition to this direct attack on the distressed mortgage situation, the Corporation was empowered to purchase the bonds of the institutions comprising the Home Loan Bank System. The Act of April 27, 1934, authorized the purchase of Federal Home Loan Bank bonds, the Act of June 27, 1934, in addition directed subscription to the stock of the Federal Savings and Loan Insurance Corporation, and the Act of May 28, 1935, authorized the purchase of shares of the Federal savings and loan associations. In *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 211, the power of the Federal Land Banks to purchase United States bonds was held to be an important indication of their functions as a valid fiscal agency. A corresponding power in the Corporation to purchase bonds and subscribe to the stock of these other institutions of the Home Loan Bank System must necessarily make the Corporation an appropriate agency to aid in their financial

operations,[52] just as the Federal Land Banks are for that reason an appropriate fiscal agency of the United States.

We do not anticipate that petitioner will deny that the Corporation had at least some effect in bulwarking and supplementing the operations of the Home Loan Bank System. The questions are thus reduced to the degree of the necessity that the Corporation be created, and to whether Congress has chosen the most appropriate method to accomplish this end. And few things are better settled than the principle that this Court will not review a decision of the Congress as to the degree of the necessity which impels it to create a fiscal agency, nor will it undertake to judge whether one method or another would have been better adapted for the occasion. *Farmers' National Bank* v. *Dearing,* 91 U. S. 29, 33–34; *Smith* v. *Kansas City Title Co.,* 255 U. S. 180, 210; *Davis* v. *Elmira Savings Bank,* 161 U. S. 275, 290; *Easton* v. *Iowa,* 188 U. S. 220, 238; cf. *Veazie Bank* v. *Fenno,* 8 Wall. 533, 548; *McCray* v. *United States,* 195 U. S. 27.

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[52] It is immaterial to the question of constitutionality whether or not these powers have actually been exercised. "The existence of the power under the Constitution is not determined by the extent of the exercise of the authority conferred under it." *Smith* v. *Kansas City Title Co., supra,* 210. However, on June 30, 1936, the Corporation had invested $52,817,100 in Federal savings and loan associations and had subscribed to $100,000,000 of stock in the Federal Savings and Loan Insurance Corporation. *Fourth Annual Report of Federal Home Loan Bank Board,* p. 130.

2. *A Fiscal Agency Itself.*—Even apart from its intimate relationship to the Home Loan Bank System, the Corporation seems to us plainly to be an important fiscal agency of the United States. It is true that nowhere is the Corporation designated as a depository of Government funds. As we read petitioner's argument (Br. 13–18), she would not deny the constitutionality of the Corporation had it so been designated, or perhaps even if it had been directed to purchase United States bonds. However persuasive the presence of these powers may be to indicate that the institution in question is a fiscal agency, see *Smith* v. *Kansas City Title Co.*, *supra*, it is evident that their absence is too rudimentary a touchstone by which to repudiate a huge financial institution, wholly owned by the United States, as unconnected with its fiscal operations. Such a conclusion can be reached only after examination of its actual operations.

However, it should again be noted that the Act of April 27, 1934, authorized the purchase of Federal Home Loan Bank bonds, the Act of June 27, 1934, directed subscription to the stock of the Federal Savings and Loan Insurance Corporation, and the Act of May 28, 1935, authorized the purchase of shares of the Federal savings and loan associations. (See *supra*, p. 83.) Even by petitioner's analysis (Br. 16–17), this would seem to make the corporation a valid fiscal agency on and after April 27, 1934. Since the constitutionality of these other agencies is not disputed, the role of the Corporation

in purchasing their bonds and subscribing to their stock is precisely analogous to that of the Federal Land Banks in purchasing United States bonds. See *Smith* v. *Kansas City Title Co., supra,* 210–211. At any rate, petitioner seeks to avoid the effect of these amendments by stating that they occurred only in 1935 (Br. 16), after the offenses charged in the indictment had taken place. But the purchase of the Home Loan Bank bonds was authorized on April 27, 1934 (Sec. 9, c. 168, 48 Stat. 643). Of the eight counts on which petitioner was convicted (R. 494–495) only Count 14 relates to an offense committed prior to April 27, 1934 (R. 30; compare R. 13, 27, 31–32, 42, 48, 49). Petitioner was sentenced on six of the remaining counts as well as on Count 14. The sentence on each count was for one year and a day, the sentences to run concurrently (R. 6). It is settled that a conviction must be affirmed if any one of concurrent sentences was validly imposed. *Claassen* v. *United States,* 142 U. S. 140, 146–147; *Abrams* v. *United States,* 250 U. S. 616, 619; *Sinclair* v. *United States,* 279 U. S. 263, 299. Since petitioner does not attack the constitutionality of the Corporation subsequent to the amendments authorizing the purchase of Federal Home Loan Bank bonds, it would seem that the conviction must be affirmed without consideration of the constitutional status of the Corporation prior to April 27, 1934.[53]

[53] The Court should, however, note that we earlier have argued that the validity of Section 8 (e) after April 27,

While petitioner's own analysis demonstrates that she was convicted of offenses directed against a validly created fiscal agency of the United States, the answer becomes even clearer if we look into the actual operations and effect of the Corporation.

The Corporation played an important role in protecting the national banking system. On June 30, 1933, the loans of national banks secured by liens on non-farm real estate totalled $1,064,521,000, or 13 per cent of their total loans.[54] Member banks of the Federal Reserve System (see *Westfall* v. *United States,* 274 U. S. 256) held $2,064,089,000 of such investments on June 30, 1933; this was 16 per cent of their total loans and 8 per cent of their total loans and investments.[55] Data as to the total investment in urban home mortgages are less accurate, but the figures earlier given would indicate that all commercial banks held about $3,000,000,000 of urban home mortgages (see *supra,* p. 65). An institution so obviously calculated to protect this huge investment as is the Cor-

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1934, need not be considered because Count 14 relates to an offense committed prior to that time (*supra,* pp. 37–43). Accordingly, if it should agree with that argument, the Court cannot affirm the conviction on the ground here suggested. It must, if the constitutionality of the entire Act is thought to be in issue, either consider the constitutionality of the penal provisions after April 27, 1934, or the constitutionality of the Corporation prior to that date.

[54] 1935 Report of Comptroller of Currency, p. 63.

[55] Member Bank Call Report No. 60, Federal Reserve Board, Dec. 30, 1933, p. 3.

poration cannot be said to be unrelated to the fiscal powers which are exercised in the creation and operation of national banks.

Perhaps of equal importance is the manner in which the national banks are similarly protected through the stability and safety lent other financial institutions. After the crisis of 1933 it needs no citation of authority to demonstrate that our financial system is one which is closely and delicately integrated. The failure of a mortgage company may drag down a trust company, the resulting ebb of public confidence may cause a building and loan association to close its doors, the unpaid loans of which, combined with a growing panic among depositors, may force even a solvent national bank to suspend operations. When it is remembered that the value of urban home mortgages held in 1934 by financial institutions of all types is estimated at $17,500,000,000,[56] it becomes evident that the financial community as a whole was thoroughly dependent upon its investment in urban home mortgages. In 1933 about 44 per cent of the mortgagors were in default (*supra,* p. 68) and the large increase in the volume of foreclosures (*supra,* p. 67) insured that the sinking realty values would

[56] *Supra*, p. 65.

Compare the estimate of $22,075,000,000 of urban real estate mortgages held in 1931 by building and loan associations, banks, and insurance companies. Clark, *Internal Debts of the United States*, p. 76.

make refinancing of maturing mortgages a matter of extreme difficulty, which in turn would force many new defaults by mortgagors. We think it evident that widespread financial distress was certain unless the vicious circle of foreclosures and defaults on urban home mortgages could be broken.

The Congress, possessed of an undisputed power to establish a banking system, had an equally extensive power to protect and preserve that system. The classic statement is found in *Farmers' National Bank* v. *Dearing*, 91 U. S. 29, 34:

> The power to create carries with it the power to preserve. The latter is a corollary from the former.

Further, it is settled that the authority of Congress to create a banking system includes the power to authorize the national banks themselves to conduct any business which is "appropriate or relevant to the banking business." *Osborn* v. *Bank*, 9 Wheat. 738; *First National Bank* v. *Union Trust Co.*, 244 U. S. 416, 420; *Smith* v. *Kansas City Title Co.*, *supra*, 211. It seems beyond dispute that preservation of the urban home mortgage investments was "appropriate or relevant" to the banking business. Congress may validly legislate with respect to matters which have so problematic and remote an effect upon the national banking system as thefts from state banks which are members of the Federal Reserve System. *Westfall* v. *United States*, 274 U. S. 256. It follows *a fortiori* that Congress

may validly remedy an evil which has an indisputable and calamitous impact upon the national banking system. And since such an activity could thus be undertaken by the banks themselves, Congress may, of course, establish a separate corporation more efficiently to do the same thing.

C. THE ACT IS A CONSTITUTIONAL EXERCISE OF THE GENERAL WELFARE POWERS

It is settled that Congress has the power to make expenditures to provide for the general welfare of the United States, and that this power is not limited to the ambit of the other powers enumerated in Section 8 of Article I. *United States* v. *Butler,* 297 U. S. 1; *Steward Machine Co.* v. *Davis,* No. 837, October Term, 1936; *Helvering* v. *Davis,* No. 910, October Term, 1936. We submit that the Home Owners' Loan Corporation was created and functioned in exercise of this power.

1. *The Corporation Functioned in Exercise of the Power to Tax and to Borrow.*—Petitioner does not dispute the power of Congress to provide for the general welfare but does argue that the manner in which the Corporation functioned was such as to make it a "substitute" for taxation and appropriation, and thus not to be justified as providing for the general welfare (Br. 18–20).

The Corporation, all of the capital stock of which is owned by the United States, made cash loans and exchanged its bonds with mortgagees. Its bonds were guaranteed by the United States first as to

interest and then, as to bonds issued after April 27, 1934, both as to interest and as to principal. Congress has at all times prescribed the maximum amount of bonds which the Corporation may issue, and the maximum amount which may be used for each of the designated purposes. (See *supra*, pp. 72–75.) We think that there can be no substantial doubt but that Congress has full constitutional power to provide for the general welfare in this manner.

As we understand petitioner's argument, she does not object on the ground that the money used for the purposes of the Corporation is, apart from the $200,000,000 stock subscription, obtained by borrowing rather than by taxation and appropriation. Nor does she object because the mortgagees are given the bonds in exchange for their mortgage notes held, rather than being paid in cash. Neither objection would have substance. The power of the United States to borrow is necessarily coextensive with the power to tax. And, just as taxes may be earmarked for specified purposes, *Cincinnati Soap Co.* v. *United States*, 301 U. S. 308, 313, so, too, may the proceeds of borrowing (or the direct disposition of the bonds) be earmarked for designated purposes.

Petitioner, instead, appears to challenge the use of the corporate mechanism to accomplish results otherwise within the powers of appropriation and borrowing. But few things are better settled than

that Congress has full power to exercise its constitutional powers through the medium of a corporation. *McCulloch* v. *Maryland,* 4 Wheat. 316, 421–422; *Smith* v. *Kansas City Title Co.,* 255 U. S. 180, 208; *New York ex rel. Rogers* v. *Graves,* 299 U. S. 401, 408. Petitioner's complaint that the corporate mechanism is a device by which to "avoid" governmental exercise of the power is equally applicable to every corporation which the United States has created in order to accomplish a governmental purpose.

The argument that Congress did not "create" the Corporation, but instead directed the Federal Home Loan Bank Board to do so (Br. 35–36) is unsubstantial. There is none but a verbal distinction in the two methods of incorporation. Compare, for example, the general incorporation statute found in every State.

It may be that latent in petitioner's argument is an objection based upon delegation of powers. But such an argument would be groundless. The Home Owners' Loan Act of 1933, and the subsequent amendments, specify the purposes for which the cash and bonds are to be used with all the particularity which would be practicable (*supra,* pp. 72–75). The specificity of the Act goes far beyond what ever requirements may be imposed by the Constitution. See *Cincinnati Soap Co.* v. *United States, supra,* 321–322.

2. *Refinancing of Home Mortgages is for the General Welfare.*—This Court has said that the

decision as to what is a general welfare is one of discretion, and that, "The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment." *Helvering* v. *Davis, supra,* p. 6 (pamph.). The question before this Court, as petitioner herself phrases it (Br. 22), is whether or not the activities of the Corporation constitute a "very plain case" of abuse of the Congressional discretion. To this we think there can be but one answer. Moreover, we submit that this answer is compelled whether the functions of the Corporation be viewed as (a) the extension of credit to class of citizens without adequate credit sources, or (b) the protection of home ownership.

a. We shall not burden the Court with a repetition of our argument (*supra,* pp. 78–90) that a source of credit for the home owner was of imperative importance to the national banking system and to the financial structure as a whole. The problem was of urgent national concern. Loans made to necessitous home owners directly and unequivocally benefited the credit structure of the entire country. It cannot be supposed that the welfare which was thus promoted was one which was merely local in character.

Indeed, we are of the view that this question has already been decided by the Court. It is unnecessary to elaborate the basic analogy between the Farm Credit System and the activities of the

Corporation. This Court has several times considered the former system in detail. *Smith* v. *Kansas City Title Co.*, 255 U. S. 180; *Federal Land Bank* v. *Gaines*, 290 U. S. 247; *Federal Land Bank* v. *Priddy*, 295 U. S. 231. It is, accordingly, sufficient here to recall to the Court that the Farm Credit System is essentially a system by which the various Federal credit corporations (the stock of which is partially or wholly owned by the United States) loan money to farmers on first mortgages, or on shorter term notes with other types of security. The validity of the System was initially sustained under the fiscal powers of the United States, *Smith* v. *Kansas City Title Co., supra,* but the subsequent decisions of this Court indicate that it is also a valid exercise of the general welfare powers. Thus, in *Federal Land Bank* v. *Gaines, supra,* this Court said (p. 254):

> It is true that both the petitioner and the Association were, in a broad and general sense, public agencies or instrumentalities to carry out a policy of the government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings.

And the Court stated in *Federal Lank Bank* v. *Priddy,* 295 U. S. 229, 231, that the Federal land banks were "engaged in the performance of an important governmental function." We can see no reason why the Constitution can be held to grant power to the United States to make loans to

farmers but not to urban home owners. In the importance to the national well being, the two classes are at least on a parity,[57] and to each class and to the entire nation the alleviation of an unfortunate credit situation had become a matter of primary concern.

Also, it is of interest to note that in *Federal Land Bank* v. *Priddy, supra,* 235–236, the Home Owners' Loan Corporation was listed as an example of a corporation created by Congress "to perform Federal functions."

b. The case is equally clear under the converse view, by which the general welfare is seen to be provided for in the protection of home ownership.

It has been estimated that about 44 per cent of the 6,090,000 urban home owners who had borrowed on the security of their homes were in default on January 1, 1934. (*Supra,* pp. 66, 68.) The situation may be assumed to have been at least as bad in 1933. Foreclosures had mounted until they reached the frightening total of 248,700 in 1933, and in June of that year they were 24,000 in number (*supra,* p. 67). Almost half of the urban mortgages were of a maturity life of nine years or less,[58] so even those home owners who were able to meet

[57] It is to be noted that there are about three times as many urban home owners as there are operating farm owners. See Abstract of Fifteenth Census, Dept. of Commerce, pp. 306, 407.

[58] Long Term Debts in the United States, Dept. of Commerce, Bureau of Foreign and Domestic Commerce, p. 142, summarizes the data in *Financial Survey of Urban Hous-*

current interest payments were, in many cases, faced by imminent default because of the impossibility of refinancing during a time of financial crisis.

It seems to us unnecessary to burden the Court with statistics to demonstrate the vital importance to the nation of preserving its citizens from eviction from their homes. Indeed, this Court has heretofore recognized the basic public interest in maintenance of home ownership. "Housing is a necessary of life." *Block* v. *Hirsh,* 256 U. S. 135, 156. And the decision in *Home Building & Loan Assn.* v. *Blaisdell,* 290 U. S. 398, seems to us to be conclusive on the magnitude and fundamental nature of the public interest in protecting home ownership. There this Court took judicial notice of the severity of the economic crisis and its impact upon necessitous mortgagors, and stated (pp. 444–445) that it produced "conditions urgently demanding relief," in order to secure "the protection of a basic interest of society." The decision of this Court in *Helvering* v. *Davis, supra,* with respect to the national interest in the relief of poverty in old age, also seems conclusive that this public interest is also a national interest. (See also *Federal Land Bank* v. *Gaines, supra,* 254; *Federal Land Bank* v. *Priddy, supra,* 231.

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ing, to show that 20.5 per cent of the loans had maturities of 1–4 years, 27.2 per cent of 5–9 years, 32.0 per cent of 10–14 years, and 20.3 per cent of 15 years and over.

c. The relief of more than a million distressed home owners, and the substitution of sound investments for over $3,000,000,000 of notes of uncertain worth held by mortgagees, seems obviously to be a matter of national concern. Certainly is this the case if the scope of this relief be measured against the appropriations which Congress has made, almost from the beginning, to relieve misfortune and promote the welfare in fields of far narrower scope than that now under consideration."

Petitioner does not take issue with these facts but seeks to demonstrate that the Corporation was not engaged in providing for the general welfare because its activities were inconsequential: "an agency to reduce interest rates from 6% to 5%, a slight shuffling of the debtor-creditor relationship" (Br. 22). The argument has its elements of novelty. Certainly not in recent years has an Act of Congress been challenged on the ground that the changes it has wrought are trivial.

We think it self-evident, if the Congressional appropriation relates to a subject embraced within the "general welfare," that it cannot be assailed

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[69] We shall not extend this brief by listing the particular acts of Congress. Extensive selections of such appropriations are gathered together in the Brief for the United States in *United States* v. *Butler*, No. 401, October Term, 1935, pp. 154–168, App. pp. 61–69, and in the Brief for the Federal Land Bank in *Smith* v. *Kansas City Title Co.*, No. 199, October Term, 1920, pp. 33–37, and for the Joint Stock Land Bank in the same case, pp. 66–70.

because it does not accomplish all the good that might be desired. However, since the issue between petitioner and ourselves has been reduced to such a narrow compass, we shall very briefly indicate the important contributions to the general welfare which may be traced to the operations of the Corporation.

1. The catastrophic increase in the number of foreclosures has been checked (*supra*, p. 77). Just how much of this may be due to the activities of the Corporation is perhaps controversial, but none will deny it a major role in producing this result.

2. Over a million home owners have refinanced their mortgage burdens with the Corporation. It is probably unfair to assume that each of these mortgagors would otherwise have been faced with eviction, but it may safely be said that this was the case with the great majority, since the Act after April 27, 1934, made involuntary default, or prior eviction, coupled with an inability to obtain funds from other sources, a condition to the relief, except, prior to May 28, 1935, in the case of mortgages held by institutions in liquidation (*supra*, p. 74).

3. Financial institutions generally were relieved of frozen, however sound, assets and were protected against the alarming consequences of widespread foreclosures.

4. By taking over the mortgages of financial institutions in liquidation, some $400,000,000 was released to their depositors and creditors.[60]

5. Home ownership and sound real estate financing have each received an encouragement which should be of lasting effect. In substantial part replacing the short-term, unamortized mortgage loan, carrying interest of 6 per cent or more, and requiring frequent refinancing, approximately one-sixth of the urban home mortgage debt has been converted into a 15 year, amortized indebtedness, bearing interest of 5 per cent only (*supra,* p. 76). It is to be expected that the long term amortized loan will become more typical in private lending.[61]

6. During the three years of its lending life, the Corporation enabled mortgagors to pay more than $225,000,000 in delinquent taxes to states and local governments.[62]

7. About $79,000,000 was advanced to mortgagors and expended in reconditioning their refinanced homes, thus putting the homes in livable condition and directly affording about 9,000,000 working days of employment for the hard pressed building trades.[63]

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[60] H. O. L. C., Purposes and Accomplishments, p. 6.

[61] In 1934, as indicated by a representative sampling, 47.7 per cent of the urban mortgage debt was represented by loans with terms of 9 years or less. *Supra,* note 58.

[62] H. O. L. C., Purposes and Accomplishments, p. 7.

[63] See *Ibid.*, p. 7.

8. The Corporation had an important but incalculable role in stabilizing real estate values. To some degree it contributed to the considerable increase in the value of urban residential real estate, by making unnecessary the sale of distressed properties in the market.[84]

Thus, even if the petitioner be correct that the Corporation can be said to provide for the general welfare only if its effects pass a quantitative test, it seems evident that its operations have resulted in an important and extensive contribution to the welfare of the nation.

3. *There is no Violation of the Ninth or Tenth Amendment.* We have shown that the Corporation was engaged in a legitimate Federal function, that of providing for the general welfare. We find it difficult to understand how a power which is thus granted to the Federal Government could nonetheless be one "not delegated" but "reserved to the States" under the Tenth Amendment, or in disparagement of rights retained by the people under the Ninth Amendment. See *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 331.

Even if this could in logic result, it must follow as a matter of constitutional government that powers exercised for the "general" welfare are not inappropriate for the Federal Government. The decision of this Court in *Helvering* v. *Davis, supra* (pamph., pp. 6, 8, 9), is as fully applicable to the

[84] See *Ibid.*, p. 6.

preservation of homes as to the relief of a destitute old age:

> Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be intervowen in our day with the well-being of the nation. What is critical or urgent changes with the times.
>
> The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided.
>
> * * * * *
>
> The problem is plainly national in area and dimensions. Moreover, laws of the separate states cannot deal with it effectively. Congress, at least, had a basis for that belief. States and local governments are often lacking in the resources that are necessary to finance an adequate program of security for the aged.
>
> * * * * *
>
> When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield.

So, also, in this case, the factors which show that the activities of the Corporation are directed toward providing for the "general" welfare simultaneously demonstrate that they constitute no invasion of the powers of the States or the rights of the people.

If there could be doubt, it must be dispelled on consideration of the fact that in the loans offered by the Corporation there is no coercion of either the debtor or the mortgagee. It merely offers assistance in those cases where both the creditor and the debtor are willing to accept it. There is no over-persuasion into entering a regulatory scheme, as in *United States* v. *Butler,* 297 U. S. 1. There is nothing resembling the conversion of a State building and loan association, merely on the assent of two-thirds of its stockholders, into a Federal corporation over the protest of the State, which created and minutely regulated the corporation. *Hopkins Savings Assn.* v. *Cleary,* 296 U. S. 315. There is no attempt to force creditors of political subdivisions of the State to accept partial payment, as in *Ashton* v. *Cameron County District,* 298 U. S. 513. All that is done is to offer, on application of the debtor and assent of the creditor, to exchange bonds of the Corporation for the mortgage notes held by the creditor. Acceptance is wholly voluntary and receipt of the offered benefits entails no collateral obligations. The States are left as free as before to regulate the transactions by which individuals loan money on mortgage notes, and both the States and the people remain as wholly free as before to devise any scheme they choose to mitigate the hardships of mortgage defaults and foreclosures in a time of economic crisis. Petitioner's contention, in short, seems based upon an unprecedented confusion between charity and duress.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgments of the courts below should be affirmed.

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NOVEMBER 1937.

APPENDIX

The Home Owners' Loan Act of June 13, 1933, c. 64, 48 Stat. 128, as amended April 27, 1934, c. 168, Secs. 1–6, 9, 11–13, 15, 48 Stat. 643, as amended June 27, 1934, c. 847, Secs. 506, 508, 48 Stat. 1263, 1264, and as amended May 28, 1935, c. 150, Secs. 10–17, 49 Stat. 293, (U. S. C., Title 12, c. 12, Secs. 1461–1468).

AN ACT To provide emergency relief with respect to home mortgage indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debt elsewhere, to amend the Federal Home Loan Bank Act, to increase the market for obligations of the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Home Owners' Loan Act of 1933."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "Board" means the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

(b) The term "Corporation" means the Home Owners' Loan Corporation created under section 4 of this Act.

(c) The term "home mortgage" means a first mortgage on real estate in fee simple or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a period of not less than fifty years to run from the

date the mortgage was executed, upon which there is located a dwelling or dwellings for not more than four families, which is used in whole or in part by the owner as a home or held by him as his homestead, and which has a value of not to exceed $20,000; and the term "first mortgage" includes such classes of first liens as are commonly given to secure advances on real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

* * * * * *

REPEAL OF DIRECT LOAN PROVISION OF FEDERAL HOME LOAN BANK ACT

SEC. 3. Subsection (d) of section 4 of the Federal Home Loan Bank Act (providing for direct loans to home owners) is hereby repealed.

CREATION OF HOME OWNERS' LOAN CORPORATION

SEC. 4. (a) The Board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such bylaws, rules, and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the Board shall constitute the board of directors of the Corporation and shall serve as such directors without additional compensation.

(b) The Board shall determine the minimum amount of capital stock of the Corporation and is authorized to increase such capital stock from time to time in such amounts as may be necessary, but not to exceed in the aggregate $200,000,000. Such stock shall be subscribed for by the Secretary of the Treasury on behalf of the United States, and payments for such subscriptions shall be subject to call in whole or in part by the Board and shall be made at such time or times as the Secretary of the Treasury deems advisable. The Corporation shall issue to the Secretary of the Treasury receipts for payments by him for or on account of such stock, and such receipts shall be evidence of the stock ownership of the United States. In order to enable the Secretary of the Treasury to make such payments when called, the Reconstruction Finance Corporation is authorized and directed to allocate and make available to the Secretary of the Treasury the sum of $200,000,000, or so much thereof as may be necessary, and for such purpose the amount of the notes, bonds, debentures, or other such obligations which the Reconstruction Finance Corporation is authorized and empowered under section 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time, is hereby increased by such amounts as may be necessary.

(c) In order to provide for applications heretofore filed, for applications filed within thirty days after this amendment takes effect, and for carrying out the other purposes of this section, the Corporation is authorized to issue bonds in an aggregate amount not to exceed $4,750,000,000, which may be ex-

changed as hereinafter provided, or which may be sold by the Corporation to obtain funds for carrying out the purposes of this section or for the redemption of any of its outstanding bonds; and the Corporation is further authorized to increase its total bond issue for the purpose of retiring its outstanding bonds by an amount equal to the amount of the bonds to be so retired (except bonds retired from payments of principal on loans), such retirement to be at maturity or by call or purchase or exchange or any method prescribed by the Board with the approval of the Secretary of the Treasury: *Provided,* That no bonds issued under this subsection, as amended, shall have a maturity date later than 1952. Such bonds shall be in such forms and denominations, shall mature within such periods of not more than eighteen years from the date of their issue, shall bear such rates of interest not exceeding 4 per centum per annum, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the

holder the amount thereof which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds of the Corporation issued under this subsection which are guaranteed as to interest and principal, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated as public-debt transactions of the United States. The bonds issued by the Corporation under this subsection shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be

subject to taxation to the same extent, according to its value, as other real property is taxed. No such bonds shall be issued in excess of the assets of the Corporation, including the assets to be obtained from the proceeds of such bonds, but a failure to comply with this provision shall not invalidate the bonds or the guaranty of the same. The Corporation shall have power to purchase in the open market at any time and at any price not to exceed par any of the bonds issued by it. Any such bonds so purchased may, with the approval of the Secretary of the Treasury, be sold or resold at any time and at any price. For a period of six months after the date this subsection, as amended, takes effect, the Corporation is authorized to refund any of its bonds issued prior to such date or any bonds issued after such date in compliance with commitments of the Corporation outstanding on such date, upon application of the holders thereof, by exchanging therefor bonds of an equal face amount issued by the Corporation under this subsection as amended, and bearing interest at such rate as may be prescribed by the Corporation with the approval of the Secretary of the Treasury; but such rate shall not be less than that first fixed after this subsection, as amended, takes effect on bonds exchanged by the Corporation for home mortgages. For the purpose of such refunding the Corporation is further authorized to increase its total bond issue in an amount equal to the amount of the bonds so refunded. Nothing in this subsection, as amended, shall be construed to prevent the Corporation from issuing bonds in compliance with commitments of the Corporation on the date this subsection, as amended, takes effect [April 27, 1934].

(d) The Corporation is authorized, for a period of three years after the date of enactment of this Act, (1) to acquire in exchange for bonds issued by it, home mortgages and other obligations and liens secured by real estate (including the interest of a vendor under a purchase-money mortgage or contract) recorded or filed in the proper office or executed prior to the date of the enactment of this Act, and (2) in connection with any such exchange, to make advances in cash to pay the taxes and assessments on the real estate, to provide for necessary maintenance and make necessary repairs, to meet the incidental expenses of the transaction, and to pay such amounts, not exceeding $50, to the holder of the mortgage, obligation, or lien acquired as may be the difference between the face value of the bonds exchanged plus accrued interest thereon and the purchase price of the mortgage, obligation, or lien. The face value of the bonds so exchanged plus accrued interest thereon and the cash so advanced shall not exceed in any case $14,000, or 80 per centum of the value of the real estate as determined by an appraisal made by the Corporation, whichever is the smaller. In any case in which the amount of the face value of the bonds exchanged plus accrued interest thereon and the cash advanced is less than the amount the home owner owes with respect to the home mortgage or other obligation or lien so acquired by the Corporation, the Corporation shall credit the difference between such amounts to the home owner and shall reduce the amount owed by the home owner to the Corporation to that extent. Each home mortgage or other obligation or lien so acquired shall be carried as a first lien

or refinanced as a home mortgage by the Corporation on the basis of the price paid therefor by the Corporation, and shall be amortized by means of monthly payments sufficient to retire the interest and principal within a period of not to exceed fifteen years; but the amortization payments of any home owner may be made quarterly, semi-annually, or annually, if in the judgment of the Corporation the situation of the home owner requires it. Interest on the unpaid balance of the obligation of the home owner to the Corporation shall be at a rate not exceeding 5 per centum per annum. The Corporation may at any time grant an extension of time to any home owner for the payment of any installment of principal or interest owed by him to the Corporation if, in the judgment of the Corporation, the circumstances of the home owner and the condition of the security justify such extension. As used in this subsection, the term "real estate" includes only real estate held in fee simple or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located a dwelling or dwellings for not more than four families, which is used in whole or in part by the owner as a home or held by him as his homestead, and which has a value of not to exceed $20,000. No discrimination shall be made under this Act against any home mortgage by reason of the fact that the real estate securing such mortgage is located in a municipality, county, or taxing district which is in default upon any of its obligations.

For the purposes of this Act, levies of assessments upon real property, made by any special district organized in any State for public improvements, shall be treated as general-tax levies are treated. The Board shall determine the reasonableness of the total annual burden of taxes and assessments of all kinds upon any property offered as security for the payment of a loan made by the Corporation and the effect of the total levies upon the loanable value of such property, but no deduction shall be made from the loanable value of any property for levies not due at the time of making such loan in any instance where the total annual taxes and assessments borne by the said property for all purposes does not exceed a sum which, in the discretion of the Board, is a reasonable annual tax burden for such property.

(e) The Corporation is further authorized, for a period of three years from the date of enactment of this Act, to make loans in cash subject to the same limitations and for the same purposes for which cash advances may be made under subsection (d) of this section, in cases where the property is not otherwise encumbered; but no such loan shall exceed 50 per centum of the value of the property securing the same as determined upon an appraisal made by the Corporation. Each such loan shall be secured by a duly recorded home mortgage, and shall bear interest at the same rate and shall be subject to the same provisions with respect to amortization and extensions as are applicable in the case of obligations refinanced under subsection (d) of this section.

(f) The Corporation is further authorized, for a period of three years from the

date of enactment of this Act, in any case in which the holder of a home mortgage or other obligation or lien eligible for exchange under subsection (d) of this section does not accept the bonds of the Corporation in exchange as provided in such subsection and in which the Corporation finds that the home owner cannot obtain a loan from ordinary lending agencies, to make cash advances to such home owner in an amount not to exceed 40 per centum of the value of the property for the purposes specified in such subsection (d). Each such loan shall be secured by a duly recorded home mortgage and shall bear interest at a rate of interest which shall be uniform throughout the United States, but which in no event shall exceed a rate of 6 per centum per annum, and shall be subject to the same provisions with respect to amortization and extensions as are applicable in cases of obligations refinanced under subsection (d) of this section.

(g) The Corporation is further authorized to exchange bonds and to advance cash to redeem or recover homes lost by the owners by foreclosure or forced sale by a trustee under a deed of trust or under power of attorney, or by voluntary surrender to the mortgagee subsequent to January 1, 1930, subject to the limitations provided in subsection (d) of this section.

(h) The Board shall make rules for the appraisal of the property on which loans are made under this section so as to accomplish the purposes of this Act: *Provided*, That no person shall be allowed to act as appraiser if he is in the employ of any company holding a loan on the property, or if he is interested in the subject matter of the loan.

(i) Any person indebted to the Corporation may make payment to it in part or in full by delivery to it of its bonds which shall be accepted for such purpose at face value.

(j) The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided by law in the case of the members of the Board. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. The Corporation shall pay such proportion of the salary and expenses of the members of the Board and of its officers and employees as the Board may determine to be equitable, and may use the facilities of Federal Home Loan Banks, upon making reasonable compensation therefor as determined by the Board. No person shall be appointed or retained as an officer, employee, agent, or attorney, at a fixed salary, in any regional or State office of the Corporation who is an officer or director of any firm, corporation, or association engaged in lending money on real estate; nor shall

any person be appointed or retained as an officer, employee, agent, or attorney in any State or district office of the Corporation, who has not been a bona fide resident of the State served by such office for a period of at least one year immediately preceding the date of his appointment.

(k) The Board is authorized to make such bylaws, rules and regulations, not inconsistent with the provisions of this section, as may be necessary for the proper conduct of the affairs of the Corporation. The Corporation is further authorized and directed to retire and cancel the bonds and stock of the Corporation as rapidly as the resources of the Corporation will permit. All payments upon principal of loans made by the Corporation shall under regulations made by the Corporation be applied to the retirement of the bonds of the corporation. Upon the retirement of such stock, the reasonable value thereof as determined by the Board shall be paid into the Treasury of the United States and the receipts issued therefor shall be canceled. The Board shall proceed to liquidate the Corporation when its purposes have been accomplished, and shall pay any surplus or accumulated funds into the Treasury of the United States. The Corporation may declare and pay such dividends to the United States as may be earned and as in the judgment of the Board it is proper for the Corporation to pay.

(l) No home mortgage or other obligation or lien shall be acquired by the Corporation under subsection (d), and no cash advance shall be made under subsection (f), unless the applicant was in involuntary default on June 13, 1933, with respect to the indebted-

ness on his real estate and is unable to carry or refund his present mortgage indebtedness: *Provided,* That the foregoing limitation shall not apply in any case in which it is specifically shown to the satisfaction of the Corporation that a default after such date was due to unemployment or to economic conditions or misfortune beyond the control of the applicant.

(m) In all cases where the Corporation is authorized to advance cash to provide for necessary maintenance and to make necessary repairs it is also authorized to advance cash or exchange bonds for the rehabilitation, modernization, rebuilding and enlargement of the homes financed; and in all cases where the Corporation has acquired a home mortgage or other obligation or lien it is authorized to advance cash or exchange bonds to provide for the maintenance, repair, rehabilitation, modernization, rebuilding, and enlargement of the homes financed and to take an additional lien, mortgage, or conveyance to secure such additional advance or to take a new home mortgage for the whole indebtedness; but the total amount advanced shall in no case exceed the respective amounts or percentages of value of the real estate as elsewhere provided in this section. Not to exceed $400,000,000 of the proceeds derived from the sale of bonds of the Corporation shall be used in making cash advances to provide for necessary maintenance and necessary repairs and for the rehabilitation, modernization, rebuilding and enlargement of real estate securing the home mortgages and other obligations and liens acquired by the Corporation under this section.

(n) The Corporation is authorized to purchase Federal Home Loan Bank bonds, debentures, or notes, or consolidated Federal Home Loan Bank bonds or debentures. The Corporation is also authorized to purchase full-paid-income shares of Federal Savings and Loan Associations after the funds made available to the Secretary of the Treasury for the purchase of such shares have been exhausted. Such purchases of shares shall be on the same terms and conditions as have been heretofore authorized by law for the purchase of such shares by the Secretary of the Treasury: *Provided,* That the total amount of such shares in any one association held by the Secretary of the Treasury and the Corporation shall not exceed the total amount of such shares heretofore authorized to be held by the Secretary of the Treasury in any one association. The Corporation is also authorized to purchase shares in any institution which is (1) a member of a Federal Home Loan Bank, or (2) whose accounts are insured under title IV of the National Housing Act, if the institution is eligible for insurance under such title; and to make deposits and purchase certificates of deposit and investment certificates in any such institution. Of the total authorized bond issue of the Corporation $300,000,000 shall be available for the purposes of this subsection, without discrimination in favor of Federally chartered associations, and bonds of the Corporation not exceeding such amount may be sold for the purposes of this subsection.

* * * * *

SEC. 7. The provisions of this Act shall apply to the continental United States, to the Territories of Alaska and Hawaii, and to Puerto Rico and the Virgin Islands.

PENALTIES

SEC. 8. (a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both.

(b) Whoever (1) falsely makes, forges, or counterfeits any note, debenture, bond, or other obligation or coupon, in imitation of or purporting to be a note, debenture, bond, or other obligation, or coupon, issued by the Home Owners' Loan Corporation or an association; or (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited note, debenture, bond, or other obligation, or coupon, purporting to have been issued by the Home Owners' Loan Corporation or an association, knowing the same to be false, forged, or counterfeited; or (3) falsely alters any note, debenture, bond or other obligation, or coupon, issued or purporting to have been issued by the Home Owners' Loan Corporation or an association; or (4) passes, utters, or publishes, or attempts to pass, utter, or publish, as true any falsely altered or spurious note, debenture, bond, or other obligation, or coupon, issued or purporting to have been issued by the Home Owners' Loan Corporation or an association, knowing the

same to be falsely altered or spurious, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(c) Whoever, being connected in any capacity with the Board or the Home Owners' Loan Corporation or an association (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise intrusted to it; or (2) with intent to defraud the Board or the Home Owners' Loan Corporation or an association, or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiners of the Board or the Home Owners' Loan Corporation or an association, makes any false entry in any book, report, or statement of or to the Board or the Home Owners' Loan Corporation or an association, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree thereof, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than five years, or both.

(d) The provisions of sections 29, 30, 32, 35, 37, 39, 112, 113, and 117 of the Criminal Code of the United States (U. S. C., title 18, secs. 73, 74, 76, 82, 83, 88, 91, 202, 203, and 207), insofar as applicable, are extended to apply to the Home Owners' Loan Corporation, its contracts or agreements, and an association under this Act which, for the purposes herein shall be held to include advances, loans, discounts, and purchase or repurchase agreements; extensions and re-

newals thereof; and acceptances, releases, and substitutions of security therefor.

(e) No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge, or receive, or attempt to solicit, contract for, charge, or receive, from any person applying to the Corporation for a loan, (1) any fee, charge, or other consideration, whether bond or cash, except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services, or (2) any moneys, check, note, or other form of obligation, representing payment of any difference which may exist between the market value and the par value of the bonds of the Home Owners' Loan Corporation. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than two years, or both.

SEPARABILITY PROVISION

SEC. 9. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Act of April 27, 1934, c. 168, 48 Stat. 643, 644, 646:

SEC. 1 * * *

(b) The amendments made by subsection (a) of this section [to Sec. 4(c)] (except with respect to refunding) shall not apply to any bonds heretofore issued by the Home

Owners' Loan Corporation under such section 4 (c), or to any bonds hereafter issued in compliance with commitments of the Corporation outstanding on the date of enactment of this Act.

* * * * *

SEC. 7. (a) The first sentence of the eighth paragraph of section 13 of the Federal Reserve Act, as amended, is further amended by inserting before the semicolon, after the words "Federal Farm Mortgage Corporation Act", a comma and the following: "or by the deposit or pledge of bonds issued under the provisions of sub-section (c) of section 4 of the Home Owners' Loan Act of 1933, as amended.

(b) Paragraph (b) of section 14 of the Federal Reserve Act, as amended, is further amended by inserting after the words "bonds of the Federal Farm Mortgage Corporation having maturities from date of purchase of not exceeding six months" a comma and the following: "bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended, and having maturities from date of purchase of not exceeding six months."

SEC. 8. The Federal Reserve banks are authorized, with the approval of the Secretary of the Treasury, to act as depositaries, custodians, and fiscal agents for the Home Owners' Loan Corporation.

SEC. 9. The Home Owners' Loan Corporation is authorized to buy bonds or debentures of Federal Home Loan Banks upon such terms as may be agreed upon or to loan money to Federal Home Loan Banks upon such terms as may be agreed upon but not to exceed $50,000,000 shall be invested or advanced under this section.

Act of June 27, 1934, c. 847, 48 Stat. 1246, 1256:

CREATION OF FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

SEC. 402. (a) There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as the "Corporation"), which shall insure the accounts of institutions eligible for insurance as hereinafter provided, and shall be under the direction of a board of trustees to be composed of five members and operated by it under such bylaws, rules, and regulations as it may prescribe for carrying out the purposes of this title. The members of the Federal Home Loan Bank Board shall constitute the board of trustees of the Corporation and shall serve as such without additional compensation. The principal office of the Corporation shall be in the District of Columbia.

(b) The Corporation shall have a capital stock of $100,000,000, which shall be divided into shares of $100 each. The total amount of such capital stock shall be subscribed for by the Home Owners' Loan Corporation which is hereby authorized and directed to subscribe for such stock and make payment therefor in bonds of the Home Owners' Loan Corporation. The Corporation shall issue to the Home Owners' Loan Corporation receipts for payment for or on account of such stock, which shall serve as evidence of the ownership thereof, and the Home Owners' Loan Corporation shall be entitled to the payment of dividends on such stock out of net earnings at a rate equal to the interest rate on such bonds, which dividends shall be cumulative.

Act of May 28, 1935, c. 150, 49 Stat. 293.

SEC. 17. * * *

(b) Section 9 of the Act entitled "An Act to guarantee the bonds of the Home Owners' Loan Corporation, to amend the Home Owners' Loan Act of 1933, and for other purposes", approved April 27, 1934, is hereby repealed.

Resolution adopted by the Board of Directors of the Home Owners' Loan Corporation at a meeting held on January 23, 1934 (Bulletin No. 48, February 3, 1934).

BE IT RESOLVED by the Board of Directors of Home Owners' Loan Corporation that the ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services shall consist of the following:

(1) An appraisal fee for a professional appraisal of the property as approved by the Board of Directors.

(2) A fee for a character report in a sum agreed upon by the State, District, or Territorial Manager after consideration of bids.

(3) Necessary recording and similar fees charged by public officials.

(4) Necessary charges for perfecting title, as approved by the State Counsel of the Corporation, in a sum not exceeding $75.00 in any case, and larger necessary charges if approved by the Board of Directors.

(5) Necessary and usual fees for abstracts, examination of title, examinations of abstracts, opinions on title, certificates of tile or title insurance, as approved by the State, District, or Territorial Counsel of the Corporation.

(6) Charges of attorneys or title companies for escrow services or closing loans, as approved by the State Counsel.

(7) Any other necessary charge for like necessary services, as specifically approved by the Board of Directors.

BE IT FURTHER RESOLVED that ordinary and necessary charges made by agents, brokers, banks, or other corporations or attorneys against mortgagees for services rendered to them are not considered by Home Owners' Loan Corporation to be condemned by Home Owners' Loan Act of 1933. The Corporation will not go forward with the refunding of indebtedness, however, in cases where mortgagees employ representatives upon representations that such representative is able to secure more or better services or treatment from the Corporation than the mortgagee himself could receive or where charges made by such representative in any way, directly or indirectly, adversely affects any mortgagors involved.

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SUPREME COURT OF THE UNITED STATES.

No. 61.—October Term, 1937.

Gertrude Kay, alias Gertrude Klein, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 31, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioner was convicted of violations of Section 8 (a)[1] and (e)[2] of the Home Owners' Loan Act of 1933. Act of June 13, 1933, c. 64, 48 Stat. 128, 134, amended by Act of April 27, 1934, c. 168, 48 Stat. 643, 647. 12 U. S. C., Section 1467 (a) and (e). The Circuit Court of Appeals sustained the conviction (89 F. (2d) 19) and because of the importance of the questions presented certiorari was granted. 301 U. S. 679.

The conviction was upon eight counts of the indictment, viz., counts 5 and 15 under Section 8 (a) and counts 8, 12, 14, 20, 24

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1 Section 8 (a) of the Home Owners' Loan Act (12 U. S. C. 1467 (a)) is as follows:

"Sec. 8 (a) Whoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both."

2 Section 8 (e) of the Act (12 U. S. C. 1467 (e)), as originally enacted by the Act of June 13, 1933, c. 64, 48 Stat. 134, was as follows:

"(e) No person, partnership, association, or corporation shall make any charge in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act except ordinary charges authorized and required by the Corporation for services actually rendered for examination and perfecting of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years, or both."

By the Act of April 27, 1934, c. 168, Sec. 12, 48 Stat. 643, 647, Section 8 (e) was amended so as to read:

"(e) No person, partnership, association, or corporation shall, directly or indirectly, solicit, contract for, charge or receive, or attempt to solicit, contract for, charge or receive any fee, charge, or other consideration from any

and 25 under Section 8 (e). To count 12 petitioner had pleaded guilty but later was permitted to withdraw that plea, pleaded not guilty, and went to trial. On count 8, imposition of sentence was suspended and petitioner was placed upon probation. On the remaining seven counts, petitioner was sentenced to a year and a day in prison, the sentences to run concurrently.

The Circuit Court of Appeals refused to consider errors arising on the bill of exceptions, as it had not been settled and filed within the time permitted by Rule IX of the Criminal Appeals Rules. The court accordingly limited its consideration to the sufficiency of the indictment, entertaining and deciding the questions of the constitutional validity of the Home Owners' Loan Act and of the provisions of Section 8 (a) and (e) in particular.

The Government contends that the convictions should be sustained, irrespective of questions of the validity of any part of the statute, upon the ground that, the sentences being concurrent, the judgment should be affirmed if good under any one of the counts. In that view, the Government submits that petitioner consented to the judgment on count 12. The point is that petitioner was permited to withdraw her plea of guilty to that count although eleven days had intervened, while Rule II (4) of the Criminal Appeals Rules requires such a motion to be made within ten days. The Government argues that the provision of the rule is mandatory and hence the judgment as one upon consent, should be affirmed without consideration of the merits. Petitioner answers that the Government by going to trial is now estopped to raise the question and further that a plea of guilty does not prevent the defendant from challenging the sufficiency of the indictment. (2 Bishop on Criminal Procedure, 2d ed., Sec. 795.) The point does not appear to have been raised either in the District Court or in the Court of Appeals and it is based solely upon the dates of certain entries in the criminal docket without any supporting proof. We are not disposed to deal with a question of that importance presented in this manner.

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person applying to the Corporation for a loan, whether bond or cash except ordinary fees authorized and required by the Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services. Any person, partnership, association, or corporation violating the provisions of this subsection shall, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than five years or both''.

First.—As to the counts under Section 8 (a).[3]—Counts 5 and 15, under that provision, charge that petitioner, being the holder of a second mortgage upon certain premises, in executing the consent to accept bonds of the Home Owners' Loan Corporation in full settlement, and for the purpose of influencing the action of the Corporation, knowingly and falsely stated that her claims were respectively in the sums of $590 and $650, whereas in fact they were respectively only in the sums of $285 and $150.

Petitioner argues that there is no allegation that a loan to the owner was made or approved, or that any payment was made to petitioner; that the second mortgagee's consent is temporary and may be withdrawn; that it is not under oath and that there is no warranty of the truth of the information given. ~~Appellant~~ ^Petitioner argues further that any statement in the consent of a second mortgagee as to the balance due cannot endanger or directly influence any loan made by the Corporation; that the second mortgagee is not an applicant and that the practice in such cases negatives reliance on the consent, as the essential factors are the value of the property, as to which the Corporation makes its appraisal, and the earning capacity of the owner. None of these arguments is impressive. It does not lie with one knowingly making false statements with intent to mislead the officials of the Corporation to say that the statements were not influential or the information not important. There can be no question that Congress was entitled to require that the information be given in good faith and not falsely with intent to mislead. Whether or not the Corporation would act favorably on the loan is not a matter which concerns one seeking to deceive by false information. The case is not one of an action for damages but of criminal liability and actual damage is not an ingredient of the offense.

~~Appellant's~~ ^Petitioner's main argument is that the whole scheme of the statute is invalid; that Congress had no constitutional authority to create the Home Owners' Loan Corporation,—to provide for the conduct of a business enterprise of that character. There is no occasion to consider this broad question as ~~appellant~~ ^petitioner is not entitled to raise it. When one undertakes to cheat the Government or to mislead its officers, or those acting under its authority, by false statements, he has no standing to assert that the operations of the Government in which the effort to cheat or mislead is made are without constitutional sanction.

[3] See Note 1.

We recently dealt with a similar contention that the false claims statute (Criminal Code, Section 35) did not apply to a conspiracy to cheat the United States by false representations in connection with operations under a statute which this Court found to be unconstitutional. We said that such a construction was inadmissible. "It might as well be said that one could embezzle moneys in the United States Treasury with impunity if it turns out that they were collected in the course of invalid transactions. . . . Congress was entitled to protect the Government against those who would swindle it regardless of questions of constitutional authority as to the operations that the Government is conducting. Such questions cannot be raised by those who make false claims against the Government". *United States* v. *Kapp,* decided December 6, 1937; *Madden* v. *United States,* 80 F. (2d) 672. While the instant case is not one of conspiracy to obtain money from the United States, but one of false statements designed to mislead those acting under authority of the Government, the principle involved is the same. Apart from any question of the validity of the other provisions of the Home Owners' Loan Act, Congress was entitled to secure protection against false and misleading representations while the Act was being administered, and the separability provision of the Act (Section 9) is clearly applicable. *Utah Power Co.* v. *Pfost,* 286 U. S. 165, 184.

There is the further argument that the provision of Section 8 (a), separately considered, offends the due process clause as being vague and uncertain. We find no merit in that contention. The statute defining the crime is sufficiently explicit.

Second.—As to the counts under Section 8 (e).[4]—The Government points out that count 14 is based on the statute as it was originally enacted in 1933. That count charges that petitioner on or about April 1, 1934, made a contract with an applicant for a loan for the payment to petitioner of a certain sum for services in connection with the loan, and that the contract was not for "an ordinary charge or fee authorized and required by the Home Owners' Loan Corporation for services actually rendered for examination and perfection of title, appraisal, and like necessary services".

Counts 12, 20, 24 and 25, under the statute as amended, charge that petitioner in or about June, July and September, 1934, made similar contracts for the payment of unauthorized charges.

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[4] See Note 2.

It appears that the Board of Directors in January, 1934, specifically provided that "the ordinary charges authorized and required" for services should consist of (1) an appraisal fee as approved by the Board, (2) a fee for a character report, (3) necessary recording and similar fees, (4) necessary charges for perfecting title in a sum not exceeding $75 in any case and larger necessary charges if approved by the Board, (5) necessary and usual fees for abstracts, examination of title, opinions, certificates of title or title insurance, (6) charges of attorneys or title companies for escrow services or closing loans, and (7) any other necessary charge for like necessary services as specifically approved by the Board.

Section 8 (e) is also separable from the other provisions of the statute. It is plainly designed to prevent the exploitation of applicants. It rests upon the same principle as that which underlies Section 8 (a) as to false and misleading representations to the officials of the Corporation. Congress was entitled not only to prevent misapplication of the public funds and to protect the officials concerned from being misled, but also to protect those who sought loans from being imposed upon by extravagant or improper charges for services in connection with their applications. This would be in the interest "not only of themselves and their families but of the public". See *Yeiser* v. *Dysart*, 267 U. S. 540, 541; *Nebbia* v. *New York*, 291 U. S. 502, 535, 536. Authority to penalize such exploitation while the enterprise is being conducted cannot be regarded as dependent upon the validity of the general plan. That plan might or might not be assailed. If assailed, a long period might elapse before final decision. Meanwhile, the governmental operations go on, and public funds and public transactions require the protection which it was the aim of these penal provisions to secure, whatever might be the ultimate determination as to the validity of the enterprise. *United States* v. *Kapp, supra.*

As a separable provision, the validity of Section 8 (e) is challenged as lacking the requisite definiteness under the due process clause. Section 8 (e) as amended in 1934 omitted the words "in connection with a loan by the Corporation or an exchange of bonds or cash advance under this Act" which were in the original provision. But the context, in the amended section, sufficiently shows that the forbidden charges are those in connection with applications "for a loan, whether bond or cash". The resolution adopted by the Board of Directors sets forth the nature of the ordinary

charges that "are authorized and required", and the power of Congress to provide for such action by the Board is not open to question. See *United States* v. *Grimaud,* 220 U. S. 506, 521; *United States* v. *Shreveport Grain Co.,* 287 U. S. 77, 85. The phrase "like necessary services" in the section describes services which are cognate to those mentioned in the preceding clause "for examination and perfection of title" and "appraisal". And the resolution of the Board, after stating the categories of authorized charges, provides for "any other necessary charge for like necessary services, as specifically approved by the Board of Directors". We think that the statute sets up an ascertainable standard and is "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties". *United States ex rel. Handler* v. *Hill,* 90 F. (2d) 573, 574. Compare *Connally* v. *General Construction Co.,* 269 U. S. 385, 391; *Old Dearborn Co.* v. *Seagram Corporation,* 299 U. S. 183, 196.

Third.—We have considered the objections to the indictment which were open in the absence of a bill of exceptions. The Circuit Court of Appeals rightly held that the bill of exceptions was not settled and filed in time under the rule. But its decision was rendered before our decision in *Ray* v. *United States,* 301 U. S. 158, construing Rule IV of the Criminal Appeals Rules. See, also, *Forte* v. *United States,* decided December 6, 1937. That rule gives to the Circuit Court of Appeals full supervision and control of the proceedings on appeal, "including the proceedings relating to the preparation of the record on appeal". The appellate court, in the exercise of its sound discretion, has authority to provide for the correction of any miscarriage of justice in connection with any action of the trial judge relating to the settlement and filing of a bill of exceptions.

As the Circuit Court of Appeals may have proceeded in this case upon the assumption that it had no power to approve the settlement and filing of the bill of exceptions and to pass upon the rulings it disclosed, its judgment will be vacated and the cause will be remanded so that the appellate court may be free to exercise its discretion in that relation.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.